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ABSTRACT

This report, which is the result of an examination of New Jersey's public education system, contends that the state has not been completely successful in providing an educational atmosphere free from sex bias. The report reviews federal and state legislation, and law, policy, and research in the areas of sexual harassment, teacher training and curriculum implementation, and teen pregnancy/school-based day care centers. Recommendations made based on this review include: the creation of a private right of action for those who charge discrimination in education; the ability of the Commissioner of Education to award attorney's fees in cases of discrimination; the provision of affirmative steps to remedy existing discriminatory patterns in hiring and promotion practices in education; the declaration that sexual harassment is in fact discrimination; the recognition that sex-equity curricula are of great importance: and the establishment of school-based day care centers for parenting teens. The recommendations comprise bill drafts and suggestions for the executive branch. Nine appendices are included. (DB)

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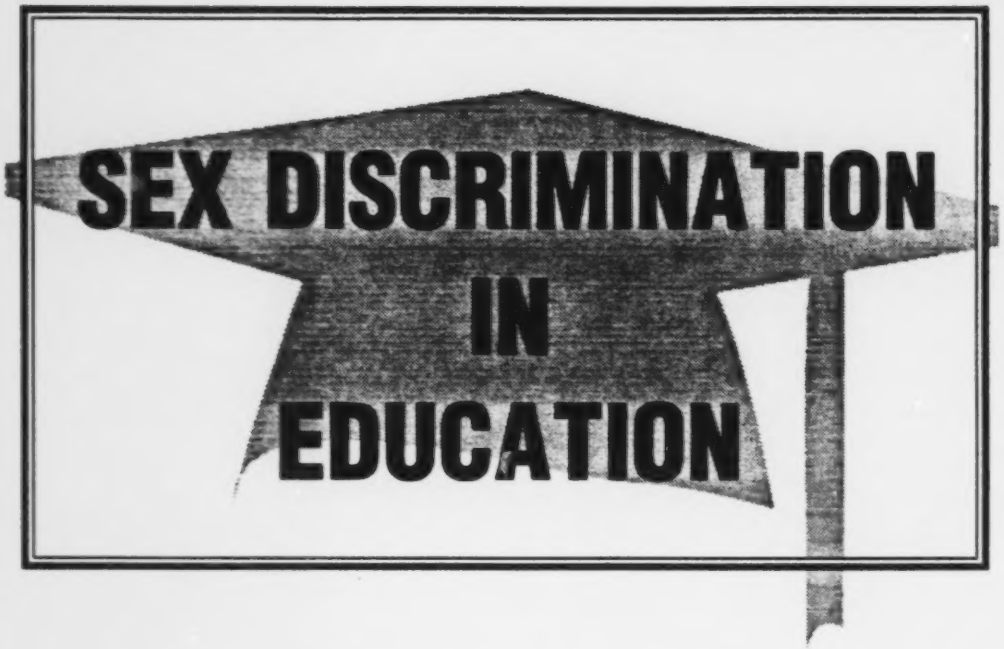

A REPORT FROM THE COMMISSION ON SEX DISCRIMINATION IN THE STATUTES OF THE NEW JERSEY LEGISLATURE

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TO THE HONORABLE JAMES J. FLORIO,GOVERNOR; THE HONORABLE ROBERT N. WILENTZ, CHIEF JUSTICE; THE HONORABLE JOHN LYNCH, SENATE PRESIDENT; THE HONORABLE JOSEPH DORIA, SPEAKER OF THE GENERAL ASSEMBLY; AND HONORABLE MEMBERS OF THE SENATE AND THE GENERAL ASSEMBLY:

The Commission on Sex Discrimination in the Statutes respectfully submits its fifth report, *SEX DISCRIMINATION IN EDUCATION*, pursuant to the mandate of P.L. 1978, c.68.

The report is the result of the Commission's study of the public education system where it has a differential impact on men and women. The study commenced with a public hearing in July of 1989 and continued with research and meetings with various members of the New Jersey education system.

This report contains recommendations in six distinct areas: the creation of a private right of action for those who charge discrimination in education, the ability of the Commissioner of Education to award attorney's fees in cases of discrimination, the provision of affirmative steps to remedy existing discriminatory patterns in hiring and promotion practices in education, the declaration that sexual harassment is in fact discrimination, the recognition that sex-equity curricula are of great importance, and the establishment of school based day care centers for parenting teens. The recommendations comprise bill drafts and suggestions for the executive branch.

We believe that the issues identified in the recommendations will contribute to the elimination of sex discrimination in New Jersey, and we urge their legislative and administrative implementation.

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PREFACE

The Commission on Sex Discrimination in the Statutes began its study of the education system in New Jersey in 1989. A public hearing held in July of that year resulted in the identification of problems with discrimination in both curriculum and administration. The inability to obtain a remedy in Superior Court to remedy discrimination was a primary concern, as were the existing enforcement mechanisms available to allow for the adequate implementation of the anti-discrimination laws and regulations that govern the public school system. As Senator Donald DiFrancesco pointed out at the hearing, "The Commission felt strongly that the education area should be addressed at this time, due to the fact that there is a strong feeling that children--young people--are susceptible to being counseled or taught in a manner that would conflict with our goals, mainly to eliminate sex discrimination in the education area." It was of great concern to the Commission that the practice of treating boys and girls differently and the passing on of stereotypes still exists and that this practice is not in keeping with the present and anticipated needs of the state for skilled people of both sexes.

The Commission applauds the efforts of the New Jersey Legislature to end sex discrimination. The support for the reforms suggested in earlier Commission reports by individual legislators, legislative staff, and nonpartisan staff at the Senate and Assembly has been heartening to those who believe that there is a moral imperative, not just a legal requirement, to treat women and men equally. Because the Commission was created to expose and correct any discrimination imposed or implemented or sanctioned by the government, and because it functions within the government, a major concern of the Commission members has been to protect the public's interest in not using government funds to support discriminatory programs.

The Commission would like to thank all of the witnesses who testified before the Commission who stepped out of their prescribed roles as parents and educators who depend on the system to give it some constructive advice; Janie Gabbe who contributed the cover art; and the staff of the Commission, most especially Ariel Perelmuter, Assistant Director for Research, and Danielle Ben-Jehuda, Student Intern, who did much of the research incorporated in this report.

(I) INTRODUCTION

The State of New Jersey has constitutionally and legislatively mandated that public school students shall receive a thorough and efficient education[1] free from discrimination.[2] Testimony taken by the Commission indicates that the state has not been completely successful in providing a bias-free environment in which school-aged children strive to attain their academic training.

> School classrooms are minisocieties that, while self-contained, replicate the larger society. Sex inequities characteristic of the larger society are found in abundance in coeducational classrooms; the most common of these inequities are sex segregation, male dominance, and interpersonal interactions designed to subtly reinforce sex differences and sex stereotyping. Although coeducational schools were hailed as a major victory for women's educational equity in the late 19th and early 20th centuries, since they provided girls and women access to education previously denied them, they were not intended to prepare girls and boys for similar positions in society. Not only were coeducational schools formally segregated, with separate entrances for girls and boys, but the curriculum was differentiated by sex according to then-current standards: domestic science for girls, "real world" subjects for boys.
>
> Present-day public coeducational schools are generally prohibited by law from providing different services to boys and girls, but subtle inequities remain in coeducational classrooms -- inequities that are quite capable of perpetuating a sex-inequitable adult society.[3]

Both as a matter of law and as a matter of policy, the state should not differentiate between girls and boys in a stereotyped way, providing girls with a negative self image and an inferior education. Our children need to be educated in a sex- equitable manner in order to learn to deal with each other on an equitable level as adults.

> Children learn about themselves and the world in large part through everyday encounters and to a lesser degree, through carefully planned activities. Research shows that, in general, boys and girls have different experiences and are interacted with in distinct ways by adults on the basis of unconscious assumptions made by teachers and parents. These assumptions about children's current and future needs, abilities and styles often alter adult behaviors so that girls are learning certain behaviors and boys another.[4]

Further, the need for sex equity in education is becoming a matter of increasing concern within the economic realm. The issue is no longer one of philosophical rhetoric and visions of equality. Between the years 1985 and 2000, only 15% of the net additions to the work force will be white males.[5] During the past fifteen years, two thirds of all people entering the labor force were women.[6]

> If New Jersey is to remain competitive in a national and international economy, our vocational schools must begin to prepare women as well as men for what are now viewed as 'traditional male' vocations....While our focus here today is on education itself, we should not ignore the effects that removing gender stereotyping will have on society at large. In fact, the effect on society is precisely the reason that these changes must be made in our educational system. Single mothers make up a large portion of the population receiving public assistance. Many, if not most of these women are unaware that high paying opportunities in construction are available to them. A major obstacle in the retention of tradeswomen is harassment on the job. By exposing boys as well as girls to female construction role models, we can eliminate the notion that women do not belong on a construction site, and help to reduce the incidence of sexual harassment.[7]

New Jersey needs well-implemented legislation prohibiting sex discrimination in education because severe shortages of adequately trained personnel will be imminent if women and minorities are not given equal treatment within the education system. In fact, the personnel shortage is so acute that the business community in some areas of the country is uniting with educators in order to avoid future shortages.

National statistics demonstrate that Federal Title IX[8] has not been successful in achieving sex equity in education. Fifty-two percent of all women participated in the labor force in 1980. Yet, women continued to be segregated in low-paying occupations: 70% of all men were in occupations dominated by men, while 54% of all women were in occupations dominated by women. Not only is this segregation sex-stereotyped, woman-dominated occupations are lower paying than those occupied by men. Sex segregation persists even though "considerable attention has been focused on providing the necessary education and training to enable women to move into traditionally male-dominated, higher-paying occupations."[9]

Title IX had been in place 14 years in 1986. Though women occupied half of all professional positions for the first time in that year,[10] 60% of this figure included school teaching and nursing, traditional female jobs.[11] Further, in 1986, 80% of those providing administrative support and clerical work were women, while 71% of all sales workers and personal and retail service providers were women. There were only 2% female construction workers, 3% female mechanics and repairers, 4% female dentists, 5% female welders, 6% female engineers, 17% female doctors, and 18% female lawyers. Women business owners are also concentrated in the relatively low-paying service industries and occupations: a full 35% of self-employed women are in administrative support or service industries, compared to self- employed men, only 5% of whom are in such occupations.[12] These figures reflect a work force that is still largely sex-segregated.

Specifically, the statistics have critical implications for the sciences and any profession requiring advanced mathematics. Women are entering these professions at a very slow pace. In order to increase their numbers, girls must be encouraged to enter non-traditional fields while still in elementary or high school.

Another serious problem that is intimately connected with sex equity issues in education is the feminization of poverty. An increasing proportion of families are being maintained by women: the ratio is about one in six families. In those families with children under 18 the ratio is one in five. Such families have a particularly high rate of unemployment, 10% for whites and 15% for blacks.[13] *Addressing the high drop-out rate of single parent women maintaining families may provide the key to stemming this tide: 30% of such women do not have a high school diploma, while only 17% of household-heads in married couple families lack a high school diploma.*. Only 8% of the women in female-headed households have a college education, compared with 25% of household-heads in married couple families.[14]

The importance of education as a preventive measure for the feminization of poverty cannot be over-stressed. The unemployment and underutilization of women is wasteful of a valuable economic resource. In addition, achieving sex equity in education could help stem the rapid feminization of poverty, which also disproportionately affects children.[15]

Women continue to account for more than three-quarters of awarded degrees in education, health sciences, library sciences, and home economics. This is so despite a lessening of gender differences in career choice. From 1973-74 to 1983-84, the number of degrees awarded women in non-traditional areas more than doubled: agriculture and natural resources (from 10% to 32%), architecture (from 15% to 36%), business and management (from 13% to 43%), computer sciences (from 16% to 37%), engineering (from 2% to 14%), engineering technologies (from 1% to 8%), and protective services (from 14% to 38%). The largest shift in choices has been a move from degrees in education to degrees in business and management.[16]

Diversity in educational choices shown by girls and women needs to be encouraged and utilized. Women who have chosen non-traditional jobs could serve as role-models and mentors to girls in public schools throughout the state. This might be a particularly helpful strategy since women are still afraid of success within traditionally male fields. Girls are still being socialized and educated in ways which will continue to motivate women to avoid success, or fear success even if they seek it.[17] The kind of anxiety this engenders is a handicap to the individual girls and women involved, and could have a potentially serious effect on the economic health of this state and nation. We can no longer afford to ignore the comparatively low achievement rate of over half the population.

Schools and teachers need to understand and acknowledge the disabilities facing girls when confronted with institutional bias and the sexist vision embodied in the traditional curriculum. In conventional scholarship "the activity and behavior of men are seen as human activity, that of women as distinctly female."[18] Thus, the female experience is systematically ignored or, when noticed, is distorted. Such institutionalized perceptions must be changed if we are to achieve sex equity in our schools.

In addition, girls may need extra space and attention. Such affirmative action would counteract years of socialization, the effect of which has been negative for females. This is particularly true in math, the physical sciences, computers, athletics, and similar pursuits where boys have traditionally been given more encouragement, attention, training, and role models. In

fact, girls' disparate performance in math, science, and computers does not have to do with ability but rather with social factors such as interest and the perception of the subjects' usefulness.[19]

Given an egalitarian vision in school, it is likely that children will feel free to choose options that previous socialization (parents, media, school material) had not made *conceptually* possible, even if they were possible *in fact.* This is a goal toward which the state education system should be working.

(II) FEDERAL AND STATE LEGISLATION

OVERVIEW

PROBLEMS
RECOMMENDATIONS

FEDERAL LAW

TITLE IX BEFORE *GROVE CITY V. BELL*

Public educational institutions are prohibited from discriminating on the basis of sex by the equal protection clauses of various state constitutions and the United States Constitution[20] unless such discrimination serves "important governmental objectives" and is "substantially related to the achievement of those objectives."[21] Most private educational institutions are also prohibited from discriminating on the basis of sex in federally funded educational programs and activities by Title IX of the Education Amendments of 1972[22] and its extensive implementing regulations;[23] for Title IX extends equal protection to these federally funded educational programs and activities.[24]

Title IX states that:

> No person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance[25]

Under Title IX, most educational institutions are prohibited from engaging in virtually all discriminatory actions on the basis of sex. The section continues by explicitly providing exemptions for certain educational institutions,[26] programs, and activities:

*institutions that are becoming coeducational with the approval of the Commissioner of Education

*institutions controlled by a religious organization if coverage would conflict with the organization's religious tenets;

*institutions with a primary purpose of training individuals for the United States Military Services or the Merchant Marine;

*membership practices of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, certain higher education social fraternities and sororities, and certain voluntary youth service organizations;

*programs or activities of educational institutions or the American Legion with respect to Boys State or Boys Nation conferences, or to Girls State or Girls Nation conferences;

*father-son or mother-daughter activities, as long as "reasonably comparable" activities are provided students of the other sex;

*financial assistance awarded by institutions of higher education to individuals receiving certain pageant awards, limited to individuals of one sex, for a combination of factors related to personal appearance, poise, and talent; and

*Public undergraduate colleges that have traditionally admitted only one sex.[27]

The statute also provides that educational institutions may maintain separate living facilities for the different sexes.

For enforcement of Title IX's prohibitions against sex discrimination, each Federal department and agency providing financial assistance to educational programs and activities by grants, loans, or contracts (other than contracts of insurance or guaranty) is directed by the statute to issue rules, regulations, and general orders.[28] These must be approved by the Attorney General.[29] Compliance may be brought about by terminating or refusing to grant or continue financial assistance, or "by any other means authorized by law".[30] No penalty may be imposed until the department or agency has advised the appropriate person of the failure to comply and has determined that compliance cannot be obtained voluntarily.[31]

Title IX has been amended twice since it was signed into law on June 23, 1972. The exemption for membership practices of social and youth organizations was added in 1974, and the exemptions for Boys State and Boys Nation conferences, Girls State and Girls Nation conferences, father-son and mother-daughter activities, and financial aid for pageant awards based on personal appearance, poise, and talent were added in 1976.

In other relevant legislation, a provision of the Education Amendments of 1974 required the Secretary of Health, Education, and Welfare to publish within 30 days proposed regulations implementing Title IX "which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."[32]

In addition, on November 16, 1983, the House approved House Resolution 190, a resolution stating in part:

> that it is the sense of the House of Representatives that Title IX of the Education Amendments of 1972 and regulations issued pursuant to such title should not be amended or altered in any manner which will lessen the comprehensive coverage of such statute in eliminating gender discrimination throughout the American educational system.[33]

The Title IX regulations issued by the Department of Education define what constitutes nondiscrimination on the basis of sex for a wide variety of educational policies and practices.[34] Requirements are spelled out on such matters as admissions and recruitment, financial assistance, access to course offerings, athletics, counseling, housing and other facilities, health insurance benefits and services, employment, and compensation. Among the more notable provisions are the following:

*institutions receiving Federal financial assistance must undertake a self-evaluation of their compliance with Title IX, modifying policies and practices which do not meet requirements and taking remedial steps to eliminate the effects of discrimination;

*"Federal financial assistance" among other things includes "scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity";

*education programs and activities, including physical education classes, may not be conducted separately on the basis of sex (though there may be separation of students by sex for sports "the purpose or major activity of which involved bodily contact, for portions of classes which deal exclusively with human sexuality," or in several other instances);

*discrimination is not permitted against students on the basis of their pregnancy, childbirth, false pregnancy, or termination of pregnancy or recovery therefrom (though students may request voluntarily to participate in separate programs and activities);

*interscholastic, intercollegiate, club or intramural athletics shall not be provided separately on the basis of sex (though there generally may be separate teams for each sex "where selection for such teams is based upon competitive skill or the activity involved is a contact sport");

*interscholastic, intercollegiate, club or intramural athletics shall permit equal opportunity[35] for members of both sexes taking into consideration such matters as equipment, scheduling of games and practice, travel and per diem allowances, coaching, locker rooms and other facilities, publicity, etc.; and

*institutional applications for Federal financial assistance must be accompanied by forms assuring compliance with Title IX.

The Department of Education regulations explicitly exclude textbooks and other curricular materials from Title IX coverage.

According to the Supreme Court in *Cannon v. University of Chicago,*[36] Title IX is to be interpreted in a manner similar to Title VI of the Civil Rights Act of 1964.[37] Thus, Title IX prohibits the use of sexual criteria that would violate the equal protection clause of the fourteenth amendment to the United States Constitution if employed by a state or an educational institution engaged in state action but goes no further than the equal protection clause itself.

Title IX also amended the Civil Rights Act of 1964 to give the U.S. Attorney General the power to intervene in suits brought in U.S. courts seeking relief from denial of equal protection of

the laws under the fourteenth amendment on account of sex. The Attorney General was also given authority to initiate legal proceedings upon receiving written complaints regarding denial of equal protection of the laws by a school board or denial of admission to public colleges on account of sex. Minor changes were made in the Fair Labor Standards Act of 1938. In addition, Title IX prohibits discrimination against the blind in admission to any course of study of recipients of federal financial assistance for educational program or activity.

Applicants for federal financial assistance for a program or activity must submit a written assurance that the program or activity will be operated in compliance with Title IX's requirements. Educational institutions must also implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the institution that it does not discriminate on the basis of sex.[38] Educational institutions must further designate at least one person to coordinate their non-discrimination efforts, and establish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging discrimination.[39]

If an educational institution discriminates against persons on the basis of sex in violation of Title IX, it may be required to take such remedial action as necessary to overcome the *effects* of the discrimination.[40] Voluntary or affirmative action may also be taken to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex.[41]

TITLE IX CASE LAW

North Haven Board of Education v. Bell[42] dealt directly with Congress's intent in enacting Title IX. Title IX authorizes each agency awarding federal financial assistance to any education program to promulgate regulations ensuring that aid recipients comply with the Act, and as a sanction for noncompliance provides for termination of federal funds to the particular program, or part thereof, in which such noncompliance has been found. Pursuant to section 902, the Department of Health, Education and Welfare (HEW) interpreting "person" in section 901(a) to encompass employees as well as students, issued regulations prohibiting federally funded education programs from discriminating on the basis of sex with respect to employment. Petitioners, federally funded public school boards, when threatened with enforcement proceedings for alleged violations of section 901(a) with respect to board employees, brought suits challenging HEW's authority to issue employment regulations on the alleged grounds that section 901(a) was not intended to apply to employment practices, and seeking declaratory and injunctive relief.

The United States Supreme Court held that employment discrimination does in fact come within Title IX's prohibition. The Court further held that while section 901(a) does not expressly include employees within its scope or expressly exclude them, its broad directive that "no person" may be discriminated against on the basis of gender, on its face, includes employees as well as students.

Title IX's legislative history corroborated this conclusion. A synopsis of the history was contained in the body of the opinion and included the following:

> In the early 1970's, several attempts were made to enact legislation banning discrimination against women in the field of education. Although unsuccessful, these efforts included prohibitions against discriminatory employment practices.
>
> In 1972, the provisions ultimately enacted as Title IX were introduced in the Senate by Senator Bayh during debate on the Education Amendments of 1972. In addition to prohibiting gender discrimination in federally funded education programs and threatening termination of federal assistance for noncompliance, the amendment included provisions extending the coverage of Title VII and the Equal Pay Act to educational institutions. Summarizing his proposal, Senator Bayh divided it into two parts -- first, the forerunner of section 901(a) and then the extensions of Title VII and the Equal Pay Act:
>
> > '...The heart of this amendment is a provision banning sex discrimination in educational programs receiving Federal funds. The amendment would cover such crucial aspects as admissions procedures, scholarships and faculty employment, with limited exceptions. Enforcement powers include fund termination provisions --and appropriate safeguards -- parallel to those found in Title VI of the 1964 Civil Rights Act. Other important provisions in the amendment would extend the equal employment opportunities provisions of Title VII of the 1964 Civil Rights Act to educational institutions, and extend the Equal Pay for Equal Work Act to include executive, administrative and professional women.' [citations omitted].

The Senator's description of section 901(a), the 'heart' of his amendment, indicates that it, as well as the Title VII and Equal Pay Act provisions was aimed at discrimination in employment.

Similarly, in a prepared statement summarizing the amendment, Senator Bayh discussed the general prohibition against gender discrimination:

> 'Central to my amendment are sections 1001-1005, which would prohibit discrimination on the basis of sex in federally funded education programs...
>
> This portion of the amendment covers discrimination in all areas where abuse has been mentioned -- employment practices for faculty and administrators, scholarship aid, admissions, access to programs within the institution such as vocational education classes, and so forth.' [citations omitted][43]

The Court decided, then that the legislative history corroborated its "reading of the statutory language" and held that employment discrimination comes within the purview of Title IX.[44]

Since 1972, the interpretation of Title IX has been the subject of much debate concerning the statute's use of the term "program or activity". As discussed in *North Haven*, an agency's authority to terminate funds under Title IX depends upon the definition given this term. Some courts have read the term "program or activity" restrictively, limiting the termination power of Title IX to the specific department receiving federal financial assistance.[45] Other courts have interpreted the words "program or activity" to apply to the entire institution which is receiving federal aid, even if only one department within the institution is directly receiving such aid.[46] In an attempt to settle this ongoing debate between the conflicting court interpretations of the term "program or activity" the Supreme Court adopted the narrow interpretation in *Grove City College v. Bell.* [47]

In that case, Grove City College, a private college in Pennsylvania, enrolled several students who received direct federal Basic Education Opportunity Grants (BEOG's, now called Pell Grants). The college was *not* a participant in the Regular Disbursement System of the Department of Education in which colleges receive direct federal funds for grants, then select and distribute these grants to eligible students. Neither did the college, being a private institution, accept any other type of direct federal assistance or grants. The only federal funds that Grove City College received were those indirectly acquired when BEOG recipients paid for tuition and other education related expenses.

The Department of Education, however, required Grove City College to execute an Assurance of Compliance stating that the College would adhere to Department of Education

regulations, and in particular to those prohibiting sex discrimination in any education program or activity receiving federal financial assistance. The Department's contention was that even the receipt of indirect federal aid brought the recipient under the requirements of Title IX.

Grove City College balked and refused to sign the Assurance, contending that because it accepted no direct assistance, it did not fall under the pale of Title IX. When the Department responded by declaring the College ineligible to receive BEOGs, the College and the affected students filed suit. Grove City College challenged the Department's authority to terminate the students' aid because of the College's refusal to execute the Assurance to the College as a whole. Grove City College argued that the Department's actions were contrary to the program-specific language of Title IX.

The Court defined the words "education program or activity receiving federal financial assistance" to apply only to that specific program or activity within the institution which is receiving the federal financial aid. The Court determined that a failure to interpret Title IX in this way would ignore the program-specific language of the statute. Justices Brennan and Marshall dissented, saying that a narrow interpretation ignored "the statutory scheme enacted by Congress"[49] Congress agreed, and quickly moved to return Title IX and the other affected civil rights laws to their full original intent.

THE CIVIL RIGHTS RESTORATION ACT OF 1987

On March 22, 1988, with bipartisan Congressional support, the Civil Rights Restoration Act[50] was approved by Congress. The Act achieves a simple purpose: it broadens the prohibition of federally-assisted discrimination by stating that the "program or activity" which must not discriminate is the *entire entity* if any part of the entity receives federal financial assistance. The Act restored full coverage to Title IX as intended and previously enforced. This means that if federal aid goes anywhere within a college, university or system of higher education, the entire institution or system is covered. If federal aid is received anywhere in an elementary or secondary school system, the entire system is covered.

The Act is very blunt in conveying Congressional displeasure with the Supreme Court's *Grove City* ruling and goes so far as to mention the Court specifically. Congress particularly felt that the Court had "unduly narrowed or cast doubt upon the broad application of" Title IX.[51] The Restoration Act states very clearly that Congress intends for the provisions of Title IX to be applied to the whole educational institution, regardless of which area of the institution receives federal assistance.

NEW JERSEY STATE LAWS AND SUPPORTING CASE LAW

CIVIL RIGHTS LEGISLATION

The Legislature has declared that practices of discrimination against any residents of the state "because of race, creed, color, national origin, ancestry, age, [or] sex...are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State...."[52]

The State stands opposed to discrimination in any place of public accommodation[53] which, by definition, includes any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey.[54]

The Commissioner of Education and the Division on Civil Rights have concurrent jurisdiction to entertain complaints charging acts of gender discrimination in public school courses of study and curricula.[55] *Flanders v. William Paterson College of New Jersey*[56] is illustrative of the jurisdiction of the Division on Civil Rights with respect to public educational institutions. In that case, a female college teacher had been denied a promotion to full professor solely because of her sex. The court ruled that it was an entirely reasonable exercise of his statutory authority for the Director of the Division on Civil Rights to order that the college promote the female teacher to the rank of full professor, *and* to require the college to engage in affirmative recruitment, hiring and promotion of qualified women.[57]

CONSTITUTIONAL PROVISIONS

"The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."[58] The State's duty to educate children is a matter of constitutional demand which has been implemented by the legislature by providing for the public education of every child within the state.[59] It has been further determined that *equal* educational opportunity is to be afforded to all public school children in New Jersey.[60]

The right of a child to a thorough and efficient system of education is a fundamental right,[61] so that when that right has been violated, the courts must afford an appropriate remedy.[62] Although the right to equality of education based on sex has not been expressly litigated in New Jersey, state

constitutional provisions read with the anti-discrimination civil rights statutes imply that a child has a fundamental right to a thorough and efficient education without regard to the individual's sex.

EDUCATION LEGISLATION

Titles 18 and 18A of the New Jersey Statutes deal specifically with education. The Commissioner of Education has jurisdiction over all disputes and controversies arising under the education laws.[63] It is clearly stated in those laws that "[n]o discrimination based on sex shall be made in the formulation of the scale of wages, compensation, appointment, assignment, promotion, transfer, resignation, dismissal, or other matter pertaining to the employment of teachers..."[64] Equal compensation for male and female teachers is also mandated.[65]

The legislature has sought to guarantee equal rights for students as well as teachers in the state's public school systems.[66] To date, the courts have dealt primarily with interpreting this guarantee with reference to school athletics departments.[67] The Appellate Division, however, interpreted the section of the law that added this provision to the education laws to mean that the legislature intended that sex be included in the bases for finding protection under the constitution and laws for student opportunities.[68] As further evidence that this intention was understood by the Department, it is cited as the authority for the creation and implementation of the Equality in Educational Programs section of the New Jersey Administrative Code.[69] The stated purpose of the regulations is to guarantee each child in the public schools equal educational opportunity regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic power.[70] Policy development is left up to the local school districts;[71] however, there has been a uniform set of guidelines established as regulations for various school and classroom practices.[72] The guidelines deal with the following areas:

EDUCATION REGULATIONS

The regulations mandate that each local school district develop a policy of equal educational opportunity, and that it publicize the adoption of the policy. The regulations provide for affirmative action programs for both school and classroom practices and employment/contract practices, including the designation of an affirmative action officer and the provision for in-service training.[73] There is also a provision dealing with sexual harassment.[74]

The regulations further require each board of education to "adopt and approve courses of study, instructional materials, and programs designed to eliminate discrimination and promote understanding and mutual respect between children of different races, colors, creeds, religions, sexes, ancestries, national origins or social or economic status..."[75] Courses of study already in use are to be evaluated by the local school district to be sure that they are in conformance with the above stated criteria.

TECHNICAL ASSISTANCE

Technical assistance is to be provided to local school districts.[76]

SCHOOL AND CLASSROOM PRACTICES

A plethora of issues is addressed under this heading including guidance counselors and programs, equitable treatment of pregnant students, physical education and interscholastic athletics programs.[77]

EMPLOYMENT/CONTRACT PRACTICES

Equal Employment Opportunity regulations must be complied with in all hiring[110] and contracting[78] situations in the public educational system of New Jersey. The requirements include but are not limited to the New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Executive Order 11246 as amended, Equal Pay Act of 1963 as amended, and Title IX of the Education Amendments of 1972.

COMPLIANCE

Specific time periods are set out for compliance with the regulations promulgated in Title IX.[79] All programs or plans are to be reviewed, and, if found to be unacceptable, the Commissioner of Education shall designate someone to work with the school district to develop an acceptable plan.[80]

STATE REVIEW AND EVALUATION

At least once every three years the affirmative action plan in each school district shall be evaluated with the results of the review to be made available to the community.[81] Inadequacies are to be corrected in a timely manner.[82]

PROBLEM AREAS STRESSED IN HEARING TESTIMONY

A variety of problems were raised during hearings held by the Commission, primarily with the implementation of Title 6:4. The most pervasive were the lack of funding for adequate implementation and lack of affirmative action. Under Title 6:4, Equality in Educational Programs, each child is guaranteed an equal educational opportunity regardless of certain characteristics. The technical assistance provisions of the regulations clearly state that the Commissioner must arrange to provide technical assistance to local school districts for the development of policy, guidelines, procedures and in-service training for school personnel. Unfortunately, several witnesses testified that there are no state funds allocated to fulfill this obligation. All of the technical assistance provided by the Office of Equal Educational Opportunity is funded through federal sources.

This problem has been exacerbated by the fact that federal support is rapidly dwindling. Testimony also suggested that what is needed is "not simply the absence of discrimination, but

affirmative steps to integrate students in courses and programs. We need to require every school to have a policy and procedures to deal with intimidation and assault; staff to staff, staff to student, student to staff, and student to student. This last has been especially neglected, with official disregard and non-intervention the rule rather than the exception."[83]

Funding problems were reiterated in other testimony:

> The state provides very little money for implementation of its regulations...If equal opportunity is not seen as a priority by the State, and if the State does not follow through on its commitment, the districts see little need to meet what the state has imposed in them. ...The Department of Education, itself, needs its own affirmative action officer to function for the schools. Finally, the Department needs to reinforce 6:4-1.3(e); although a very important requirement, it has met very superficial compliance levels. It requires that each Board of Education shall adopt and approve courses of study, instructional materials, and programs designed to eliminate discrimination and promote understanding and mutual respect between children of different races, colors, creeds, religions, sexes, ancestries, national origins, or social or economic status.[84]

Title 6:4's provision on employment prohibits discrimination, but it does not provide for any affirmative steps to remedy the effects of past discriminatory practices.

> The National Center of Education Information issued a comprehensive report in January of 1988. This document, entitled 'Profile of the School Administrators in the U.S.' said, 'probably nowhere in America is there a larger block that gives more credence to the phrase 'old boy's club' than public school administrators.' This study used the following statistics to support their conclusion: 'Public school principals are 76% male and 90% white and superintendents are 96% male and 97% white. Contrasting this data are the current statistics for public school teachers which show that women make up 69% and minorities 11% of this labor market.' In New Jersey's educational community, the statistics closely resemble those on the national level.[85]

Allowing equal access is obviously not enough. Of the 583 school districts in the state of New Jersey, only 37 (6%) of the Superintendents (Chief School Officers-CSO's) are female and19 are black. The remaining 527 are white male. The following is a breakdown of the top district administrative positions:[86]

POSITION	% FEMALE	% BLACK
Superintendent	6	3.3
Assistant Superintendent	17	8
Business Administrator	20	2
Secondary Principal	11	10
Elementary Principal	22	12
Supervisors	30	8
Guidance Coordinator	31	9

Another witness testified that:

> The complaint procedure established in Title VI [N.J.A.C. 6:4] may also require examination. All complaints must first be referred to the district Affirmative Action Officer, who is usually the superintendent. An employee may be reluctant to bring complaints to the chief school administrator, especially if it involved hiring practices. Individuals may need to be able to communicate directly to the Office of Equal Educational Opportunity before initiating a complaint at the local level.[57]

The testimony at the hearing clearly shows that Title 6:4 needs to be more forcefully implemented if it is to have the effect on the education system intended by the drafters.

RECOMMENDATION

TITLE 6:4

It is generally agreed that Title 6:4 of the New Jersey Administrative Code, the Equality in Education Guidelines, are acceptable; however, there are sections that should be strengthened:

N.J.A.C. 6:4-1.3(a) states that each local school district should develop a policy of equal educational opportunity. It mandates that the district publicize this policy in an adequate manner.

PROBLEM: *The language is permissive; it should be mandatory. Publicity is a key area here. Without it, the rest of the section is useless.*

RECOMMENDATION: There should be standards implemented to outline specifically what the common customary methods of information dissemination should be in a school district and the district should be required to conform to the specific standards. Further there should be minimum standards set for the policy itself including areas it should cover and levels of action.

N.J.A.C 6:4-1.3(b) mandates a systematic internal monitoring procedure as part of a district's affirmative action program.

PROBLEM: *Alaska's experience, and that of Minnesota as well, shows that this information has to then be entered into a state-wide data base in order to be effective. It does not appear to be adequate to rely on a survey containing multiple choice questions and questions that can be answered with a simple "yes" or "no" to determine whether that district is in compliance with the Title 6:4 regulations.*

RECOMMENDATION: Comparative data collection, compliance reviews, and enforcement procedures all require such a data base. Further, the internal monitoring system itself needs clear guidelines. The Commission recommends that the data base developed for fiscal and personnel monitoring on a state wide basis be adopted to collate the appropriate data, and that the Department of Education be required to report to the Department of Personnel Affirmative Action director or some such system.

N.J.A.C 6:4-1.3(c) mandates designation of an affirmative action officer for each district.

PROBLEM: *The section sets no criteria for this officer. If the person selected to fill this role does not have relevant education or experience, training should be provided. Further, the position should be given at least part-time, if not full-time status. (If full-time then it could include all equity issues, race, class, national origin, etc.) Adding such duties to an already full- time position makes the designation of an affirmative action officer meaningless and probably punitive for the designee.*

RECOMMENDATION: The affirmative action officer should be knowledgeable in the

area of sex equity. School districts should be required by regulation to fill the position with an individual qualified under a state-wide job description. The size of the school district should be taken into account when determining whether the position should be full or part-time.

N.J.A.C 6:4-1.3(d) discusses in-service training without providing any criteria for such training. (Should it be done by a professional in the field? What areas should it cover: textbooks, classroom interaction, etc.? No criteria is established for such training.)

PROBLEM: Guidelines should be provided to cover these areas. In addition, in-service training "on a continuing basis" is too vague. This can mean once every three years or twice a year.

RECOMMENDATION: Specific time schedules and commitments should be spelled out in the regulations.

N.J.A.C 6:4-1.5(c) deals with discrimination against pregnant students or students with children. Although it prohibits excluding pregnant students from programs or activities, such language is not sufficient.

PROBLEM: Because pregnancy is the major reason female drop outs of school, affirmative steps are necessary to address the situation.

RECOMMENDATION: Pregnant and parenting students must be helped through school in a variety of ways, including provision of daycare and parenting education.

N.J.A.C. 6:4-1.5(g) prohibits the use of tests, procedures or other guidance and counselling materials differentiated or stereotyped on the basis of sex, race, etc.

PROBLEM: This would be much more effective if this included a ban on such tests or procedures which were neutral on their face but had a discriminatory impact.

RECOMMENDATION: Tests must be thoroughly evaluated on a continuing basis to avoid such discriminatory impact.

N.J.A.C 6:4-1.7(g) deals with possible sanctions against non- complying districts.

PROBLEM: Use of the word "may" instead of "shall" leaves too much discretion to the Commissioner and in fact ensures that no sanctions will be implemented.

RECOMMENDATION: The guidelines should make clear what constitutes non-compliance and make sanctions an automatic procedure.

OVERVIEW OF LEGISLATION OF OTHER STATES

Six states have statutes that explicitly and solely focus on sex discrimination in education. They are: Alaska, California, Hawaii, New York, Rhode Island, and Washington. The most comprehensive are described below. In addition, Maine, whose statute addresses educational discrimination as a result of sex or physical and mental handicap, has noteworthy enforcement provisions and unusually thorough regulations. A number of states have no general statute aimed at sex discrimination in education but include language in their education statutes or regulations dealing with specific areas of sex discrimination. They will be discussed below wherever relevant.

ALASKA

The Alaska statute,[88] known as Chapter 18, is comprehensive. It begins with the exact language of Title IX.[89] However, it continues with prohibitions against discrimination in employment,counseling and guidance services, course offerings, textbooks and instructional materials. It then *mandates* that the board of education "establish procedures for affirmative action programs" covering both employment[90]and educational opportunities[91] in districts and regions found to be in noncompliance with Chapter 18.[92] The statute further allows the board of education to withhold state funds as a last resort from such districts and regions, once the other measures taken by the board to correct the situation and enforce compliance have failed.[93] Finally, the statute provides both complaint procedures with the board *and* an independent right of action for anyone in elementary or secondary school who has been harmed by a violation of the statute. Those persons aggrieved by a violation in post-secondary education have a private right of action but no remedy through the board itself.

In addition, Alaska has a Task Force which includes the Chapter 18 Coordinator, the Vocational Education Sex Equity Coordinator, and the Office of Civil Rights Coordinator. The group meets monthly for planning and collaboration. The Task Force also consults with the Office of Curriculum Services and the Office of School Improvement. Providing further support, women educators in Alaska formed a statewide organization called "Women in Educational Administration", which serves as a support and advocacy group.[94]

Despite the extensive coverage provided by the statute, implementation has been less than adequate. According to the Alaska Women's Commission, a key area in need of improvement is the monitoring of Chapter 18.[95] The monitoring instrument used is capable of examining compliance on paper; however, it does not examine grievances to be sure that they have been correctly acted upon. It also does not examine course enrollment by gender, or the gender of the teaching staff by course offering. In addition, though the monitoring instrument indicates whether guidance counselors and teachers have received the mandatory biennial training, the training itself is not

assessed for appropriateness. There is also no method of monitoring teacher classroom methods or interactions with students.[96] This kind of monitoring is necessary in order to reach pervasive but more subtle forms of discrimination. In addition, inadequate monitoring prevents "the collection and analysis of essential data required for management and enforcement purposes....since there is no evidence on which to base a judgment."[97]

The Alaska Women's Commission further found that the creation of an ongoing data base of equity indicators for planning and monitoring purposes was a necessity. The analysis of collected data of compliance reviews and other information would provide the department with direction in its management decisions and in devising appropriate technical assistance for school districts. With regard to higher education, the Commission found that much work is left to be done in Alaska: "Sex equity courses must be designed for the numerous fields of study in which teachers specialize. Integration of sex equity into the course work of future teachers and counselors would reduce the potential for discrimination in classrooms and in counseling situations. It will be necessary to prepare educators for a certification process which, in turn, requires this preparation."[98]

WASHINGTON

Addressing inequality in educational opportunities, Washington's statutory law says that "[t]his violation of rights has a deleterious effect on the individual affected and on society."[99] The core of the statute outlines the scope of the regulations and guidelines mandated under the statute. The superintendent of public instruction is mandated to develop guidelines regarding sex discrimination in "public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students."[100]

In addition to outlining specific and comprehensive areas in athletics to which the guidelines should apply, the statute requires the superintendent "to develop a student survey to distribute every three years to each local school district...to determine student interest for male/female participation in specific sports."[101] The guidelines regarding textbooks and instructional material include, but are not limited to reference books and audio-visual materials.[102]

The superintendent is empowered to terminate all or part of state funding to a non-complying school district.[103] The superintendent is also mandated to terminate specific programs within a school district, and to institute a mandatory affirmative action program, and may place the non-complying school district "on probation with appropriate sanctions" until compliance is achieved.[104] The State of Washington, compared to other states, appears to have the most centralized model for mandating sex equity in public schools.

MAINE

Maine's Human Rights Commission and the Commissioner of Educational and Cultural Services enacted regulations concerning sex equity in education pursuant to the Maine Human Rights Act.[105] The regulations cover admissions, recruitment, academic programs, vocational programs, physical education, human sexuality, athletics, counseling, housing, financial assistance, employment assistance to students, health and insurance benefits and services, marital or parental status, and pregnancy and related conditions.

Three additional topics covered are particularly noteworthy: the inclusion of affirmative action, sexual harassment, and gender equity in school administrative positions. Maine provides that affirmative action resulting from a formal consent decree, a court order, or an affirmative action plan adopted by the governing body of the institution "shall be deemed *not* to be unlawful educational discrimination under the act"[106]. Furthermore, the regulations, promulgated jointly by the Commission on Human Rights and the Commissioner of Education, stipulate that "affirmative action plans may be adopted in the absence of a finding of unlawful educational discrimination to overcome the effects of conditions of the past which have resulted in limited participation by persons of one sex and may involve special recruitment, counseling and other efforts to encourage participation of members of that sex in programs or activities traditionally entered by the opposite sex."[107] The sexual harassment guidelines appear to be adapted for the area of education from those of the Federal Equal Employment Opportunity Commission described in the text that follows. [108] Maine's scheme for providing opportunities for women in promotions to administrative positions is its newest effort to acknowledge sex discrimination in education. The 1989 act provides that the "commission shall promote gender equity in the hiring of public school administrators in cooperation with the Commissioner of Education." [109]

The Maine statute's enforcement mechanism is unique and appears to be functioning well.[110] A bill introduced in 1983 by a coalition of women's groups provided that the Department of Education be involved with rulemaking *together with* the Human Rights Commission. The women's groups had argued successfully that the Department of Education was not the appropriate watchdog group. They both therefore play a positive role in participation and conciliation efforts.

The procedure is:

*A complaint is filed with the Human Rights Commission.

*The Commission notifies the Department of Education whenever a complaint is filed.

*In conducting an investigation, the commission, or its designated representative, shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons.

*The Commission notifies the Education Department of any finding that unlawful educational discrimination has occurred in a public school or program or a private school or program approved for tuition purposes.

*The Department of Education is then given the opportunity to participate in conciliation efforts.[111]

The bulk of cases so far have involved sexual harassment or sports.

RECOMMENDATIONS

CREATION OF A PRIVATE RIGHT OF ACTION

The three states described above all created a private cause of action for a plaintiff injured by a lack of sex equity in public school education. Alaska[112] allows an injured person either to file a complaint with the Board of Education or to bring an action in superior court for civil damages and equitable relief. Washington[113] provides civil relief for violations of its statute, and administrative enforcement procedures need not be attempted first. The Maine Human Rights Act[114] does require the use of administrative procedures before court action. However, if administrative remedies are found by the Commission to be inadequate, then an action can be filed in Superior Court with appropriate civil remedies available. In a prize-winning essay written by Professor Alfred Blumrosen, a legal expert in legislative and administrative law, a private right of action is listed as one of the six major elements necessary in achieving effective regulation:

> Legislatures may impose standards without creating a private cause of action because of a concern that individual claims litigation might become oppressive. If this approach is taken, however, beneficiaries may have the "right" to effective regulation...The objective standard necessary for self-regulation will rarely encompass all conduct that is regulated...As long as the statute creates individual rights, voluntary compliance with objective standards will not immunize the regulated institution. The experience under equal employment opportunity laws emphasizes the importance of the private cause of action. Many major cases were litigated by private parties and sustained by civil rights organizations. The risk of litigation constituted a major incentive to early settlement.[115]

As a practical matter, the sanction often threatened or available in regulatory compliance, fund withdrawal, is ineffective because it is never used. Any kind of civil rights or regulatory statute is strengthened by allowing the possibility of private citizen involvement in statutory enforcement. This principle has been recognized by the United States Congress, which "will facilitate private court actions by allowing successful plaintiffs to recover attorney fees, thus encouraging private litigation to achieve public purposes. In adopting this process, Congress has rejected the 'pure' administrative model in which the agency acts in *parens patriae* toward the protected group."[116]

A private cause of action is fundamentally important because a vigorous enforcement policy without a private cause of action smacks of paternalism to the protected group. This consideration is doubly important when considering the aims of this specific proposal: not allowing females to help themselves will encourage the continuation of existing sexist patterns.

A private cause of action should be explicitly included in legislation dealing with sex equity in education, making legislative approval of private monitoring clear. Absent express language to the contrary, the courts may someday interpret such a statute as allowing a private cause of action in any case. Explicit language makes initial interpretive litigation unnecessary.

Title IX, which does not specifically provide for a private cause of action by a student, was interpreted as so doing by the United States Supreme Court. In *Cannon v. University of Chicago,*[117] the Court noted that HEW[118] itself "candidly admitted that it does not have the resources necessary to enforce Title IX in a substantial number of circumstances,"[119] and quoted HEW's reply brief argument in the opinion: "...even if administrative enforcement were always feasible, it often might not redress individual injuries. An implied private right of action is necessary to ensure that the fundamental purpose of Title IX, the elimination of sex discrimination in federally funded education programs, is achieved."[120] Similarly, the State can look to its coffers for another reason to encourage a private right of action.

The Court in *Cannon* identified two different objectives sought to be accomplished by Title IX. They are: (1) Avoiding the use of federal resources to support discriminatory practices; and (2) Providing individual citizens with effective protection against such practices. New Jersey has adopted the philosophy of Title IX, and now needs to adopt practices that can make the philosophy work to the benefit of its citizens.

NEW JERSEY CASE LAW AND STATUTES

There appears to be concurrent jurisdiction over sex discrimination in education complaints. Jurisdiction is grounded in both the Commissioner of Education through Title 18A - The Education Law, and in the Division on Civil Rights through Title 10 - The Law Against Discrimination. Under the Law Against Discrimination,[121] any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination may file a complaint with the Division on Civil Rights *OR* initiate suit in Superior Court.[122] An individual does not have to first file a complaint with the Division on Civil Rights; but prosecution of a suit in Superior Court under the Act bars the filing of a complaint with the division or any municipal office during the pendency of any suit.[123] So the remedy of private litigation, once chosen, is exclusive. However, in a series of opinions, the courts have determined that the Commissioner of Education should have the sole responsibility for all complaints that have as their subject matter education curriculum or accommodations, whether the plaintiff chooses to file initially in Superior Court, with the Division, or with the Department. The opinions rely on the concept of superior administrative expertise to justify this special treatment. The exact language used by the court and the Attorney General is instructive in determining why this awesome power has vested in one person, the Commissioner of Education. A brief review of the pertinent cases follows.

The case of *Jenkins v. Township of Morris School District and Board of Education* [124] provides a starting point for a discussion of the responsibilities of the Commissioner of Education under Title 18A. In that case, the Supreme Court outlined the responsibilities of the Commissioner of Education and traced the statutory powers granted to the Commissioner by the legislature and the constitution.

> Our constitution contains an explicit mandate for legislative 'maintenance and support of a thorough and efficient system of free public schools'. In fulfillment of the mandate the Legislature has adopted comprehensive enactments which, inter alia, delegate the 'general supervision and control of public education' in the State to the State Board of Education in the Department of Education. As the chief executive and administrative officer of the Department, the State Commissioner of Education is vested with broad powers including the 'supervision of all schools of the State receiving support or aid from state appropriations and the enforcement of all rules prescribed by the state board'. The Commissioner is authorized to 'inquire into and ascertain the thoroughness and effieiency of operation of any of the schools of the public school system of the state'....and is empowered 'to hear and determine all controversies and disputes' arising under the school laws or under the rules of the State or the Commissioner'.[125]

The New Jersey education laws provide that "no pupil in a public school in this state shall be discriminated against in admission to, or in obtaining any advantages, privileges or courses of study of the school by reason of race, color, creed, sex or national origin."[126] This provision creates a jurisdictional conflict, because the Law Against Discrimination also provides for protection from discrimination in public accomodations, including specifically public schools. The Attorney General dealt with the conflict in a formal opinion issued in 1975:

> The question posed by your inquiry is whether the jurisdiction of the Division on Civil Rights over public accommodations duplicates the jurisdiction of the Commissioner of Education with respect to the subject of discrimination in public school curricula.
>
> In a further effort to eliminate discriminatory practices in the public schools, the Legislature recently enacted L.1973, c.380, sec.1 (effective January 14, 1974, codified as N.J.S.A. 18A:36-20). Although this statute does not specifically confer enforcement powers upon the Commissioner, it is clear, under *Jenkins,* that the Commissioner has general jurisdiction to enforce all requirements of the education laws of the State. He, therefore, does have jurisdiction to assure that the express provisions of N.J.S.A. 18A:36-20 are implemented by the local school districts.[127]

The issue was clearly stated as whether the jurisdiction of the Division on Civil Rights over public accommodations duplicates the jurisdiction of the Commissioner of Education with respect to the subject of discrimination in public school curricula. The Attorney General's opinion briefly compares the responsibilities of the Division of Civil Rights under the Law Against Discrimination with N.J.S.A. Title 18A:

> The Division has jurisdiction over those matters delegated to it by the Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Pursuant to this law, the division has general jurisdiction over housing, employment and use of public accommodations and the power to eliminate discrimination in these areas based on 'race, creed, color, national origin, ancestry, age, marital status or cause of...liability for service in the Armed Forces of the United States.' N.J.S.A. 10:5-6. This jurisdiction may be contrasted with the pervasive jurisdiction and responsibility of the Commissioner of Education to enforce all laws pertaining to the operation and administration of the public schools. The Commissioner's broad authority unquestionably extends to all discriminatory practices in the public schools and clearly encompasses exclusive jurisdiction of allegations of sex discrimination in public school curricula. The recent enactment of N.J.S.A. 18A:36-20 which expressly deals with discrimination in public schools curricula further reinforces the exclusive jurisdiction of the Commissioner in this area. The specificity with which N.J.S.A. 18A:36-20 addresses the problem of discrimination in the public schools sharply contrasts with the general language of N.J.S.A. 10:5-1 et. seq. Operation of the rule of statutory construction, that the specific supersedes the general, fortifies the conclusion that exclusive jurisdiction inheres in the Commissioner of Education over complaints involving unlawful discrimination in public school curricula.[128]

It is further reasoned in the decision that an inference can be drawn concerning the legislative intent behind N.J.S.A. 18A: 36-20; that is, that the Commissioner of Education has specific expertise and interest in dealing with issues of discrimination. The question then becomes, whether the Commissioner does in fact have the necessary expertise and, through the Department of Education, the capacity to adequately enforce the legislation as well as the regulations promulgated to assist with its enforcement. Further, we must look to see how the courts have used this reasoning to remove discrimination in education cases from the purview of the Law Against Discrimination.

In preparing to discuss the Law Against Discrimination in *Hinfey v. Matawan Regional Board of Education*,[129] the Court stated:

> A brief recapitulation of that progression, though reiterative to some degree, underscores the irrefutable conclusion that the Division on Civil Rights has the statutory jurisdiction to entertain sex discrimination complaints relating to public school curricula.[130]

The Court also noted in its historical summary that the Division on Discrimination was created in the Department of Education to enforce the Law Against Discrimination, but was subsequently moved to the Department of Law and Public Safety.

> In 1961 the Division Against Discrimination was renamed the Division on Civil Rights, and shortly thereafter, symbolic of greater emphasis upon enforcement over education and suasion, the Division was transferred from the Department of Education to the Department of Law and Public Safety under the supervisory authority of the Attorney General and the Director of the Division on Civil Rights.[131]

The Court reasoned that because schools are places of public accommodation, complaints of sex discrimination in education were indeed covered by the Law Against Discrimination.

> Public schools and public education assuredly are covered by the anti-discrimination law. Public schools under the supervision of the Commissioner of Education are specifically 'a place of public accommodation' under the Law Against Discrimination N.J.S.A. 10:5-5. A place of public accommodation is forbidden to discriminate invidiously in the offering of any of its 'advantages, facilities, [or] privileges...'N.J.S.A. 10:5-4. Given the primary responsibility of the public school for education under the school laws, it is almost tautological to say that educational programs, courses of study and curricula form the core of this responsibility. Hence it is undeniable that a public school curriculum is one of the 'advantages, facilities, [or] privileges' of a public school as a place of public accommodation. We conclude therefore that the Division on Civil Rights, consistent with the letter and spirit of the Law Against Discrimination, does have jurisdiction to hear and adjudicate claims of discrimination pertaining to courses of study and curricula in the public schools.[132]

Although the logic of the Court is faultless, it somewhat paradoxically went on to hold that the Commissioner of Education had a superior jurisdictional claim over complaints of discrimination.

> ...principles of comity and deference to sibling agencies are part of the fundamental responsibility of administrative tribunals charged with overseeing complex and manifold activities that are also the appropriate statutory concern at other governmental bodies...This is a corollary application of the broader principle that where a court has concurrent discretionary jurisdiction with another court or an administrative agency, the decision to exercise jurisdiction *vel non* should be fully responsive to the competence, expertise and status of the other tribunal...Principles of administrative comity call for the action taken by the administrative agencies at the instance of the Attorney General in this case. The portions of the complaints that have been transferred to the Commissioner relate to the content of educational programs and courses of study, matters implicating the highest level of professional expertise and judgment in the educational field...Thus the educational interest of complainants,

> which cannot be disassociated from their discrimination grievances can best be addressed by the Commissioner. There is, as importantly, every reason to believe that the Commissioner can discharge fully and faithfully his constitutional and statutory duty to eliminate the vestiges of invidious sex discrimination as alleged in these complaints (if otherwise established) and that this can be done consistent with applicable educational standards.[133]

Justice Conford, writing for the dissent, clearly articulated the need for a more comprehensive answer to this issue, and suggested that the Commissioner of Education could be an expert witness in a case to assist a court in determining whether the applicable statutes and rights have been abridged.

> The inconvenience of concurrent jurisdiction in respect of the subject matter here implicated is obvious, but, as Judge Crane aptly observed in the Appellate Division, the matter is one for attention by the Legislature, rather than improvisation of so radical a cure by the Court as declared here. Pending legislative attention to the subject, the most salutary course of administrative handling of this kind of complaint, when brought by the parties before the Division, would be for it to require the Commissioner of Education or an appropriate subordinate, to testify before the division, or where appropriate to participate in conciliation conferences, so that the educational expertise of the Department of Education could be made available to the Division for the most edified and effective exercise of its jurisdiction in disposing of the particular case.[citation omitted][134]

The reason for the vesting of jurisdiction in the Department of Education still appeared to be unclear. The Supreme Court, in its first *Abbott v. Burke*[135] opinion in 1985, sought to clarify this issue by focusing on the concept of exhaustion of administrative remedies. The Court determined that, where appropriate, administrative remedies should be fully explored before the case could be submitted to a court for resolution.

> The interests that may be furthered by an exhaustion requirement were identified in *City of Atlantic City v. Laezza*, 80 N.J. 255, 265 (1979): '(1) the rule ensures that claims will be heard, as a preliminary matter, by a body possessing expertise in the area; (2) administrative exhaustion allows the parties to create a factual record necessary for meaningful appellate review; and (3) the agency decision may satisfy the parties and thus obviate resort to the courts.'
>
> However, as explained in *Garrow*, 79 N.J. at 561, '[t]he exhaustion doctrine is not absolute. Exceptions exist when only a question of law need be resolved...when the administrative remedies would be futile...when irreparable harm would result...when jurisdiction of the agency is doubtful...or when an overriding public interest calls for a prompt judicial decision.'[136]

Much of the reasoning is grounded in the theory that an exhaustive factual record needs to be developed in order to make a proper determination and that the administrative process is best suited to this task.

> ...Based on this principle, the Court has at times required plaintiffs to exhaust their administrative remedies notwithstanding their allegations of a statute's constitutional deficiencies... For these reasons, the Court has repeatedly acknowledged and approved the administrative handling of educational controversies that arise in the context of constitutional and statutory litigation,including design of remedial measures, and supervision of the program implementation...[137]

In *Balsley v. North Hunterdon Regional High School Board of Education,*[138] the petitioner chose to bring her complaint to an administrative forum culminating in the awarding of attorney's fees as prescribed by the Law Against Discrimination. The court in *Balsley* ruled that the Commissioner had the authority to award attorney's fees, *not* under the education laws, but under the Law Against Discrimination. This development further complicates the issue in that the court is now providing for the enforcement of the Law Against Discrimination both by the Commissioner of Education *and* by the Division on Civil Rights. The decision was appealed and Justice Handler, writing for a majority of the Court, stated:

> ...the Division on Civil Rights and the Commissioner of Education have concurrent jurisdiction in discrimination cases concerning education. Because the discrimination occurs in a public education context, the Commissioner has the predominant interest in the subject matter. However, even though complainant properly filed her petition with the Commissioner of Education, the amendment of her petition to assert a claim for relief in the form of counsel fees under the LAD presented issues cognizable only before the Division on Civil Rights. The specialized remedy of counsel fees is not one within the statutory authority of the Commissioner but is available only in the Division on Civil Rights. Hence, under our decisional law and the general standards of the current rules of the Office of Administrative Law, the Commissioner of Education should not determine that claim for relief. Rather, the complainant should have filed that claim in the Division on Civil Rights or, the Commissioner having granted the application, applied to sever and transfer that claim to the Division for disposition as the Director deems appropriate in accordance with the statutory policies and regulatory standards of the LAD.[139]

This new reading of the methods of enforcement of the Law Against Discrimination seems to confuse the matter even more.

The Commission on Sex Discrimination in the Statutes recommends that New Jersey's statutes be amended to create a private right of action to correct sex discrimination in education, and that the right to an administrative action be retained as an alternative for those who feel their complaints can be more satisfactorily resolved in that manner. In the latter case, attorney's fees should be available from the Commissioner of Education for successful plaintiffs. The Legislature clearly intended that educational settings be included specifically in the category of public accommodations; it also clearly intended to provide a choice of remedies for plaintiffs. The line of decisions, in this area only, deprives plaintiffs of both. An adequate remedy can only be made available if the Legislature endorses the right of a plaintiff whose complaint is of sex discrimination curriculum matters to choose the administrative remedy within the Department of Education, which is open to all who have curriculum complaints; or to choose one of the two remedies, a private cause of action or administrative complaint decided by the Division of Civil Rights, which are available to any other party who claims discrimination.

BILLS ARE FOUND AT APPENDIX C.

ENFORCEMENT MECHANISM

The New Jersey Department of Education's enforcement of Title 6:4 and related sex equity legislation has been less than adequate. Therefore, The Commission recommends that the Department of Education be required to do a one-time, state-wide study of compliance with Title 6:4, and then have an ongoing mandate to create and enforce a remedy for deficiencies it finds. As the hearing testimony makes clear, achieving sex equity in education has not been considered a priority issue by the Department of Education.

> We're pleased to report that while there are isolated occurrences of gender bias and discrimination, the Department of Education does not believe that there are widespread problems that require statutory revision. We're not aware of any incidents of gender bias in Title 18A which is specific to education.[140]

Indeed, the Department has a troubled record in the area of civil rights enforcement. A 1963 amendment to the Law Against Discrimination transferred the Division on Human Rights[141] from the Department of Education to the Attorney General's office. The 1964 Commission on Civil Rights report stated that this signified "a new interest in the enforcement aspects of the work of the Division."

The report further stated that:

> While the oft quoted *Orange* and *Englewood* opinions of the Commissioner of Education setting forth the public policy of New Jersey based upon our constitutional and statutory guarantees have enunciated sound principles, we have yet to come to grips with acceptance of State

> responsibility for the elimination of this kind of inadequate education despite recommendations that have been made for the adoption and formulation of specific State policies to implement the principles set forth in these decisions. While this is a matter lying fundamentally in the jurisdiction of the Commissioner of Education, we feel that we would be remiss in our responsibility in reporting on areas related to the work of the Division if we were to ignore the inadequacies presently existing within the State...[T]his is to point up the need for creative thinking and planning in the field of public education and to make known these policies and procedures.[142]

The Commission on Civil Rights report went on to note the lack of initiative and hesitancy to filing a complaint shown by the Department of Education when enforcement was their responsibility, and reasoned that:

> This approach may have been the product of the generally restrained attitude towards the enforcement of the law and the failure to recognize that the statute was designed to guarantee affirmative rights to individuals in furtherance of the public policy of the State.[143]

The proposed legislation regarding sex equity in education and Title 6:4 would be enforced in a far more subtle atmosphere of discrimination than that which prevailed in the 1960's regarding racial discrimination. It would require recognizing behavior which causes discriminatory impact but is predicated on often invisible sexist stereotypes. Enforcement will require initiative on the part of the enforcer for the implementation to be a success. Effective and continuous oversight mechanisms are necessary in making administrators responsive to public needs because of a predictable tendency on the part of administrative agencies in general (and the Department of Education in particular) to defer to pressure from the regulated community. In this case, that community is over-whelmingly male: administrators, textbook publishers, and the generally male-oriented bias of the society, which is passed on through an educational system responsive to norms, not uniqueness. *Therefore, an independent investigatory function is necessary to achieve adequate enforcement of Title 6:4 and any recommended legislation regarding sex equity in education.*

The proposed legislation requiring a time-limited, independently-funded study of discrimination emphasizes the public's entitlement to an adequate system, not only a private right to be free of discrimination, As Professor Blumrosen pointed out:

> A broad interpretation is an essential initial step if the administrator wishes to be effective. Yet, 'administrative discretion' permits the agency to avoid this fundamental point by a variety of devices including endless study, leaving the matter 'to the courts', or a narrow interpretation of the statute.[144]

Such considerations apparently motivated the unique and effective enforcement procedures delineated in the Maine statute. They should be as important in New Jersey, where, without a strong statutory mandate, the Department of Education has not made a strong commitment to achieving sex equity in education. Existing regulations have not been adequately enforced. The Department of Education must be mandated to study the issue and, thereby, document the need for affirmative action. If they fail to remediate discrimination, the study will create a statistical basis for enforcement through the courts.

THE DEPARTMENT OF THE PUBLIC ADVOCATE

The New Jersey Department of the Public Advocate was created by the state legislature in answer to citizen disenchantment with the government, and the perceived need for the representation of the public in judicial and administrative forums.[145] The Department of the Public Advocate has been an important force in protecting children's rights to equal opportunity in education, and will be able, with the data generated by the study mandated in the enforcement legislation, to better locate and pursue districts that fail to meet the standards set by the Legislature. Among its various departments is a Division of Public Interest Advocacy (PIA), with the power to represent the public interest in administrative and judicial forums, and a Division of Citizen Complaints and Dispute Settlement, which acts as a mediator and ombudsperson.

PIA already participates in the Department of Environmental Protection and the Board of Public Utilities to comply with its duties to represent the public interest and oversee the administration of regulatory agencies. Thus, its regular participation as a public interest representative in the Department of Education would not be without precedent.

The Division of Citizen Complaints and Dispute Settlement is divided into the Office of Citizen Complaints (OCC) and the Office of Dispute Settlement (ODS). The OCC functions similarly to an ombudsperson; it receives and investigates citizen complaints which relate to the administration of state government. It has informal investigative powers (no subpoena power) regarding complaints about state agencies, including charges of arbitrary, unreasonable, and unlawful agency action. It also investigates citizen complaints about inefficient services or unsatisfactorily explained treatment.

OCC uses persuasion and publicity to obtain results. Both are methods which seem particularly suited to dealing with the problem of sex equity in education, which may often require sensitivity to persistently traditional visions of sex roles, or subtle exchanges which may inadvertently create a sexist atmosphere. This problem would be better addressed by persuasion than in an adversarial mode. Publicizing inappropriate behavior may be the most effective method of socialization and teaching in a media-oriented world. Further, where informal prompting and publicity do not provide a remedy, the OCC is backed by the PIA's power to litigate.

The OCC's ability to perform an effective administrative oversight function would be enhanced if it computerized the findings of the three-year study. The importance of such a monitoring system is made very clear by the Alaskan experience. The Department of the Public Advocate is already set up to monitor by computer a large amount of information in a sophisticated way, thereby enabling it to evaluate information on a statewide basis.

ODS is structured to settle community conflicts through the provision of mediation services to community groups and municipal and county agencies when requested to do so.[146] It thus maintains a liaison system with such agencies. This function would be useful when dealing with many school districts. The ability to work with community groups already in place gives the ODS the advantage of being a stronger advocate than a department unfamiliar with such methods. The mediation function complements the OCC, which deals directly with specific complaints.

The Commission recognizes that the Public Advocate has sole discretion to decide which public interest representation activities to represent.[147] This discretion also applies to the litigation activities of the PIA.[148] In addition, the PIA would be very effective if it chooses to undertake representing plaintiffs in sex-equity in education suits:

> PIA's initiation of employment discrimination cases is easily distinguished from the activities of the Division of Civil Rights,which is located in the Attorney General's Department. PIA's anti-discrimination actions not only have a broad impact, as opposed to the individual adjudications of the Division of Civil Rights, but also challenge state action...[Furthermore], the reluctance of the Attorney General to institute suit against an agency which he must represent is replaced in the Public Advocate Act by an anticipation of intragovernmental challenges. The framers of the Public Advocate Act implicitly recognized the fallibility of government and its agents in discerning public interest without independent input and in acting responsively without administrative oversight.[149]

In addition, the OCC provides an efficient administrative oversight office accustomed to overseeing agency action from the outside. This impartiality is necessary. Given the 18 years since the federal Title IX has been in place, and the 13 since New Jersey's own regulations were written, and its own statements at the Commission's hearings, it becomes obvious that the Department of Education has not seen the achievement of sex equity to be a priority. Thus, there is a compelling reason to make the Department of Education collect data that will enhance external enforcement.

A BILL IS FOUND AT APPENDIX D.

AFFIRMATIVE ACTION REGARDING WOMEN IN ADMINISTRATIVE POSITIONS

The need for affirmative action geared toward increasing the ratio of female administrators within the educational system is an issue which is raised repeatedly in this Report. We recognize the achievement of equity in school administration to be a basic element in achieving sex equity in education as a whole.

Flanders[150] provides a precedent for requiring affirmative action in the realm of higher education, but even that case, bolstered by the language of N.J.A.C. 6:4-1.3(b)2, generally has not proved sufficient to set affirmative action in motion in New Jersey. Testimony before the Commission provided chilling statistics regarding the low numbers of women as public school administrators, and one witness recommended requiring districts to take affirmative steps to recruit and hire females and non-whites.[151]

In addition, the fact that the three most comprehensive statutes described above, Alaska, Maine, and Washington, require affirmative action policies regarding recruitment and employment within the school system supports the conclusion that such action is an important element in the achievement of sex equity at administrative levels of public schools and of the public school system at large.

The Commission on Sex Discrimination in the Statutes recommends, therefore, that the

statutes be amended to provide for affirmative steps to remedy existing discriminatory patterns in hiring and promotion practices in education.

A BILL IS FOUND AT APPENDIX D.

(III) SEXUAL HARASSMENT

RECOGNIZING SEXUAL HARASSMENT

> There's nothing in the law that recognizes the very, very serious issue we have in school of inflammatory harassing, victimizing behavior - - usually victimizing girls, but not always; sometimes by adults, sometimes by peers, and sometimes by adults to adults in terms of employment situations.[152]

There is a need for a law which recognizes sexual harassment as a discrimination issue within our public school system. Towards this end, the Commission on Sex Discrimination in the Statutes supports Senate Bill 2115, sponsored by Senator Wynona Lipman.[153] It needs to be made clear that peer to peer harassment will not be tolerated and that there is institutional liability for such harassment. Experience of practitioners in the field and hearing testimony both indicate the necessity for such a policy.

"Peer harassment often begins long before students arrive at college. It occurs in high school and even in elementary school."[154] A survey done in 1981 of Massachusetts high school students disclosed that female high school students experience sexual harassment by other students. Indeed, it appears that harassment by fellow students is far more common than harassment by teachers or other staff members.[155]

The Hawaii Department of Education has a poster addressing sexual harassment by peers called "Sexual Harassment: It's Uncool". It says in part, "...When you were a kid you and your friends may have teased the girls, made them cry, maybe even hurt some of them. 'Boys will be boys', was the excuse. Let's call it what it is: sexual harassment. Domineering, tough, abusive behavior is not 'masculine'. It's unhealthy. It's uncool."[156]

Most schools are not attempting to reduce the incidence of sexual harassment. Most of it goes unnoticed.[157] In addition, patterns of behavior are learned in school, but at the same time, students, particularly women, are not being informed about ways to avoid or neutralize harassment...[T]he discrimination which occurs in the work place has its roots in the school but little is being done by educators to address the problem."[158]

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment can be either verbal or physical. Verbal harassment includes sexual innuendos, comments, suggestive or insulting sounds, whistling in a suggestive manner, sexual propositions, invitations or other pressures for sex, and implied or overt threats. Physical harassment could include patting, pinching, any inappropriate touching, attempted or actual kissing, assault or coerced sexual intercourse.[159] Sexual harassment can also include leering or ogling, obscene gestures, and other verbal or non-verbal behavior. It has been held to include the posting of nude pin-up pictures.[160] In addition, sexual harassment may involve threats of retaliation in case the victim does not comply with the demands of the harasser. Often, harassment continues

and becomes worse if not stopped.

Reactions to sexual harassment by its victims are varied. They can include feelings of helplessness, guilt, fear, humiliation, embarrassment, anger, and may also include physical symptoms such as insomnia, digestive problems and headaches.[161] The effect of harassment may be "dramatic on the students and [may] certainly affect the learning process",[162] since diminished ambition is one possible response.[163]

Many social scientists believe that sexual harassment is driven by the wish to assert power over a person in a vulnerable position.[164] The more vulnerable a person is, the more likely s/he will be harassed. Younger, single women are the most likely to be harassed.[165] In addition, statistics show that females who enter non-traditional occupations, or who are more highly educated, are also more likely to be harassed. According to the U.S. Merit Systems Protection Board, "men see women entering their 'territory' as a threat, [and] respond by using sexual harassment to try to limit the women's success or to get them to leave."[166] Whatever the social forces motivating harassment, such behavior is clearly discriminatory. If girls and women are given the opportunities to achieve as suggested in this report, greater opportunities for sexual harassement should not be a side-effect of their advancement. Therefore, focus on this area becomes imperative.

COMMON LAW REMEDIES

Common law remedies are available for plaintiffs who are the victims of some of the actions described above as sexual harassment, and some of the more serious forms carry criminal sanctions as well. Intentional torts can even reach minors, so that students in elementary school could in some situations have remedies against their peers, through civil suits theories of assault (apprehension of harmful or offensive conduct), battery (unconsented to touching), or intentional infliction of emotional distress. Although physical injury including evidence of shock, nausea, etc. may give rise to a cause of action for intentional infliction of emotional distress, psychological problems such as inability to study, shame, or anxiety might also be actionable, "depending upon the state statutes and case law within the court's jurisdiction."[167]

Contract theory may give individual students a cause of action against the school as an institution, since Title IX of the Education Amendments of 1972 requires every school to prominently display a notice to the public saying that it does not discriminate on the basis of sex. It is possible that this kind of notice may create a contract between the institution and its students. Sexual harassment (like other forms of discrimination such as stereotypical depictions of the sexes in textbooks, etc.) may constitute a breach of the contract.

However, "ogling", "leering" or "obscene gestures" may not result in convictions for assault because of stereotypical notions about women and the prevalence of such behavior. School requirements of apologies, counseling, detention, or suspension would carry a stronger social message than the occasional offender being sued for damages.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION GUIDELINES

A legal definition of sexual harassment in education has not been developed yet. However, sexual harassment in the workplace provides a statutory definition in federal regulations which can offer guidance. The Equal Employment Opportunity Commission issued the final interpretive guidelines on sexual harassment in the workplace in 1980, under Title VII of the Civil Rights Act. (See Appendix E) Sexual harassment is considered a violation of Title VII. The guidelines define sexual harassment as requests for sexual favors and/or unwelcome sexual advances. It also defines other verbal or physical conduct as constituting harassment when, among other conditions:
Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The Equal Employment Opportunity Commission (EEOC) guidelines include the elements of some kind of *unwanted* sexual behavior involved, which must interfere with the victim's work. "Interference" is particularly relevant to sexual harassment in the arena of public schools. An intimidating, hostile or offensive learning environment could be devastating to a young girl forced by law to go to school.

Under the EEOC guidelines, an employer is liable:

> ...regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence...With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer [or its agents or supervisory employees] knows or should have known of such conduct, unless it shows that it took immediate and appropriate corrective action.[168]

MERITOR SAVINGS BANK V. VINSON

Aside from the EEOC regulations, the law regarding sexual harassment in employment is court-made law. Much of the reasoning which lead courts throughout the country to perceive sexual harassment in the workplace as a sex discrimination issue is applicable to the institutions of schools as well. *Meritor Savings Bank v. Vinson*[169] is the most recent Supreme Court opinion on sexual harassment in the workplace. *Meritor* adds depth to the EEOC guidelines and discusses many areas relevant to the issue of harassment in public schools. Under *Meritor,* a plaintiff alleging a violation of Title VII does not have to experience a tangible economic loss as a result of sexual harassment. Rather, citing the EEOC guidelines, the Court held that a plaintiff may prove discrimination based on sex when harassment has created a hostile or abusive working environment. A direct link to a

grant or denial of an economic quid pro quo is not necessary where "such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working condition."[170] Justice Rehnquist, writing for the majority, cites *Henson v. Dundee*:[171]

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithet.[172]

The Court further held that "voluntary" sex-related conduct (in the sense that a plaintiff was not forced to participate against her will) is not a defense to a sexual harassment suit under Title VII. Instead, the correct inquiry is whether the plaintiff had indicated by her conduct that the alleged sexual advances were unwelcome. This has particular relevance to the school setting where the issue of socialization and age perhaps change the notion of what is "voluntary."

Though ruling that employers are not always automatically liable for sexual harassment by their employees, the Court also stated that "absence of notice to an employer does not necessarily insulate the employer from liability." Furthermore, "the mere existence of a grievance procedure and a policy against discrimination, coupled with [a plaintiff's] failure to invoke that procedure does not insulate the employer from liability.[173]

Without legislation clearly prohibiting sexual harassment in schools, a strong enforcement policy, and strong procedural protection for complainants, there is small likelihood that any change will occur. As with sexual assault, women often do not report sexual harassment they have experienced. Isolation, fear of the procedures involved, attitudes encountered, and fear of retaliation, are all well-known deterrents. It is safe to assume that young girls experiencing harassment within a state institution - such as a public school - stay silent even more often than older less protected women.

The message that this behavior is not sanctioned by the state in its public schools should be clearly made by the Legislature. The Commission recommends a private cause of action in addition to institutional procedures. This cause of action should deal with sexual harassment as a discrimination that can invoke the Law Against Discrimination.

Requiring schools to be responsible for the behavior of students would merely follow the EEOC guidelines on sexual harassment. Once defined as a discrimination issue, the EEOC guidelines can serve as a model. Because of the state action and the particular vulnerability of children, the Commission recommends holding the school liable for sexual harassment of a student by a school employee or another student. Teachers and other staff are in a "supervisory" relationship to students and should be considered such for purposes of determining liability.

RECOMMENDATION

The Commission on Sex Discrimination in the Statutes therefore strongly supports Senate Bill 2115, an act prohibiting sexual harassment, sponsored by Senator Wynona Lipman, and recommends amending it to include standards of liability and voluntary behavior necessary to protect public school students.

A COPY OF THE BILL IS FOUND AT APPENDIX F.

(IV) TEACHER TRAINING AND CURRICULUM IMPLEMENTATION

TEACHER EDUCATION

TEACHER TRAINING CURRICULUM

Whenever teachers change, everything in their classrooms changes. Therefore, the Commission believes that teacher education is the most logical point to begin the process.

> Teachers should be trained to address issues of gender, race, and social class in math, science, computer, and vocational courses, as well as in courses where opportunities for integrating these concerns are more obvious. If students are to make intelligent decisions about what they want to conserve and what they don't want to conserve, they must understand the ways in which their choices are very much embedded in the social organization of gender, race, and class.[274]

Prospective teachers need to be taught about sexism in education and its effects on students and society. Many teachers, who themselves have been socialized, reward and reinforce stereotypical behavior in their students.[275] Unfortunately, most teacher education programs do not take advantage of their ability to influence so many: on the contrary, these programs seem to be either reinforcing or actually creating biased teacher attitudes.[176] Indeed, teacher educators are less responsive to issues of sex equity than are faculty in other university departments.[177]

Existing mechanisms regarding sex equity in the profession are generally insufficient:

> The National Council for the Accreditation of Teacher Education (NCATE) and the National Association of State Directors of Teacher Education and Certification (NASDTEC) both have standards addressing sex equity.[178] However, they are not included as a separate and distinct requirement, and are weakly enforced. The 1980 NCATE reviews only denied one advanced program certification because of failure to meet multicultural standards. No basic programs were denied certification for this reason.[179]

> Professional organizations such as the American Association of Colleges for Teacher Education and the American Educational Research Association have created practical training sessions and research on sex equity in teacher education. Though articles published in professional journals have the potential to reach all teachers, they only provide basic awareness of the issue and furthermore are not read by everyone.[180]

State legislation regarding textbooks and teacher education is particularly important because neither area is covered by Title IX.

Pursuant to N.J.A.C. 6:11-2.2, the Commissioner of Education should recommend that sex bias training should be required as part of the certification requirement for New Jersey teachers. Adding a course to the teacher-training curriculum would not be difficult and could be done almost

immediately. More intense training on the issue could be instituted later, after guidelines have been formulated.

State legislation regarding teacher-education is particularly important because it is not covered by Title IX. Yet, the kind of postsecondary training teachers receive is basic to the way they will later deal with children. These prospective teachers could be learning about sexism in education and its effects in teacher education programs.[181] Many teachers, who themselves have been socialized, reward and reinforce stereotypical behavior in their students.[182] Therefore, an important long term goal should be to raise the awareness and consciousness of individual teachers.

ALASKA EXPERIENCE - The Alaskan Women's Commission extensively studied the effect of and compliance with the Alaska statute. It recommended that equity training, both in subjects and methods, "be required as a component of certification and recertification." All counselors and teachers are expected to perform their jobs in an unbiased manner. Sex equity must be integrated into the process of educating and certifying teachers and counselors so that prejudices can be avoided in the classroom and in counseling situations. The Commission further recommended that certified staff be evaluated on their ability to teach in a non-biased manner, and that individualized training plans be devised to assist them in achieving this goal.

OREGON EXPERIENCE - Oregon is the one state which concentrates its efforts on teacher preparation and practice. Since 1979, Oregon has required all educators seeking teaching or administrative certification to participate in a workshop on nondiscrimination.[183] In addition to requiring all prospective teachers to take a course in federal and state anti-discrimination law, Oregon has emphasized the six three-hour voluntary workshops offered by the Equity Specialist at the Department of Education. Every summer the Equity Specialist trains facilitators, who go back to their own districts and acquaint teachers with the issue. These teachers are then encouraged to go to the workshops. Three workshops for administrators, entitled Equity Principle, are also offered. According to the Equity Specialist, many teachers are moved to change the classroom structure and experience after participating in the six workshops offered for teachers, yet at this point encounter problems with administrators who were not involved in the three Equity Principle workshops. Thus, administrator participation is strongly encouraged and is, in fact, very popular.[184]

SCHOOL TEXTBOOKS AND CURRICULUM

Sexism is rampant in the most widely-used textbooks in teacher education.[185] In the four most often used "introduction to education" texts, sex equity issues in education were either completely absent or were given very incomplete treatment.[186] These textbooks serve to introduce prospective teachers to the profession, and provide a survey of prominent past and present contributors to the field, contemporary issues, innovations, and suggestions for the future. However, the most space given to the topic of sexism in any text was one-half of one percent.[187] There is no mention of legal remedies such as Title IX or of specific curricular and instructional strategies that teachers could use to eradicate sexism in schools.[188] Outstanding women educators such as Catherine Beecher, Elizabeth Peabody, and Maria Montessori are not mentioned, though lesser-known male educators

are included. "Not only are the contributions of individual females slighted, but the collective efforts of women are ignored as well. One gets little sense from any of these books that the majority of educators is female."[189]

This pattern is continued in educational psychology texts, methods texts, reading and language arts texts, and mathematics and science texts. An "overwhelming lack" of information on sex-equity was present in the 24 textbooks studied.[190] Of the 24 texts, 23 used less than one percent of their space on the issue of sexism and sex equity. A third of the texts did not mention the topic at all; most of the third were made up of texts on teaching mathematics and teaching science, the areas where girls have the most problems and their teachers need to be the most aware.[191]

In a field test done in 1979-1980, students at ten teacher education institutions reacted positively to materials developed for use in preservice teacher-education. Seventy-seven percent of the students thought they understood better how teachers can influence sex-stereotyping in students after the readings and discussions.[192] Over 50% of the students reported experiencing a critical insight, one that would be remembered and influential for a long time.[193] These materials were constructed by experts in the field and have been appended to this report.

Anti-sexist school textbooks and curriculum are a key to achieving sex equity in education. Textbooks are the most accessible and simple area in which sex equity issues in schooling have been studied, are measurable, and can be easily changed. Textbooks are an important and basic means of transmitting and fostering unacceptable sex role stereotyping. Research on the influence of books on their readers shows that the content of books probably affects the attitudes (and behaviors) of their readers.[194] Unfortunately, the representation of females in textbooks is still overtly sexist and stereotypical, not very different from the kind of stereotypical depiction of the sexes found in a study of children's books done in 1946.[195] Interestingly, the authors of the 1946 study found that such distinctions in the roles of the sexes was "more a survival of former practices" than relevant to 1946![196]

Girls still do not appear nearly as often as boys in text books; they are depicted in limited (and therefore limiting) roles; and those roles are not accorded respect by the boys within the texts.[197] Further, "many stories with male main characters presented no females at all, but female centered stories usually included males. Stories about girls were usually shorter than stories about boys."[198] Even taking the smaller total number of adult female characters which appear in textbooks, female adults are significantly under- represented as main characters.[199] In addition, the total number of females represented sharply declines from primers to third grade textbooks. There is also an increase with each grade level in the amount of significant sex differences between females and males for children and adult behaviors, consequences, and environments.[200] In addition, "young females were significantly more often shown as the recipients of positive consequences coming from a situation, and young males were significantly more often the recipients of positive consequences from their own action".[201] This matches the consistent textbook image of boys as more aggressive and competent at problem solving, in general, more capable of manipulating their environment in positive ways than are girls.

Teachers who are interested in a more egalitarian environment, one in which males and females are more alike than unalike, where individuals are different, not groups - therefore have to fight the sheer weight and impact of the printed word, the respect given written materials,

especially by young children, and, the uniformity of such stereotyping.

The Commission feels that the selection and use of materials at the elementary and high school level which stereotype and minimize female capabilities constitutes sex discrimination by the state. Though textbooks provide the central part of the curriculum, a change in policy regarding acceptable textbooks for schools could be accomplished quickly, because guidelines and a wide variety of material is already available. As long ago as 1972, the National Education Association published alternative curriculum materials after holding a conference on sex discrimination in the public school curriculum. Quite a few organizations have also developed non-sexist materials.[202] Even some publishers have published guidelines.[203] Therefore, by virtue of N.J.A.C. Title 6:4, legislating an anti-sexist agenda into school textbooks and curricula should be a relatively simple matter to accomplish.

> School policies which inflict discriminatory harm on discrete groups breach the responsibility which accompanies the power to socialize students. As a major source of socialization in schools, textbooks which stereotype the sexes contribute to psychological and economic harm measurable in terms of lower self-esteem, higher anxiety, and lower ambitions and attainments during and after schooling.[204]

In effect, the school system is providing girls with schooling and training which weakens or destroys achievement. This kind of discriminatory effect is arguably similar to the one recognized by the Supreme Court, which held that requiring immigrant children who do not speak English to attend classes conducted in English ignored their needs and handicapped them.[205] Slower progress, being set apart, and the resulting high dropout rate were all harms recognized by the Court.[206]

Girls are compelled by law to go to school and are at a more impressionable age than adults attending public education: the audience is a captive one, made up of children. Public schools could be seen as a government monopoly. As such, the government has a duty to represent a balanced view.[207] Further, legislating for non-sexist textbooks will prevent further costs down the road. The Commission believes that integrating the experience of women and girls into the educational system would in the long run more cheaply attain the goal of sex equity than the state's intervention at future points along the way. The avoided costs might include special education for displaced homemakers, aid to young mothers on welfare, and the costs of pay equity litigation, for example. At the present time, public education has a measurable negative economic effect on girls.

RECOMMENDATIONS

The Commission on Sex Discrimination in the Statutes recommends that the New Jersey Department of Education adopt a requirement that a course or workshop in sex equity issues in teacher-training be completed as part of the teacher training curriculum. A course should be required for certification of new teachers and a course or workshop should be required for recertification of experienced teachers.

The Commission further recommends a requirement for non-sexist textbooks and curricula in teacher-education programs and all school programs in keeping with the requirements set out in Title 6:4 of the New Jersey Administrative Code.

(V) TEEN PREGNANCY & SCHOOL BASED DAY CARE CENTERS

N.J.S.A. 6:4-15 (c) deals with discrimination against pregnant students, or students with children. Although it prohibits excluding pregnant students from programs or activities, its language is not sufficient to assure that pregnant teenagers continue their education. Since the main reason for female drop-outs is pregnancy related, affirmative action is necessary here: such students must be helped through school in a variety of ways. Programs must include day-care and parenting education to acknowledge and accommodate the profound effect becoming a parent was on a teenager.

The following programs are available in other states. They have had a positive influence on the lives of teen parents in reference to the education systems in which they are involved.

THE ACADEMY FOR EDUCATIONAL DEVELOPMENT (AED)

The Academy for Educational Development[208] "seeks not only to improve individual schools but also to foster collaboration among the various institutions that serve youth". According to AED, "such partnerships often make responses possible that no single school could undertake on its own. AED focuses on equity and access issues as well as academic issues. AED divisions have initiated several projects on the issue of teen pregnancy and school drop-outs.

AED was recently awarded a grant by the United States Department of Labor to conduct the Alternative Schools Assistance Project (ASAP). The project uses an alternative high school in Brooklyn, High School Redirection, as its model. It features an on-site child care center which helps enable teen parents to complete high school.[209]

THE SUPPORT CENTER FOR EDUCATIONAL EQUITY FOR YOUNG MOTHERS

A key project of AED was a survey of policies and programs for pregnant and parenting students in nine urban school districts, conducted in 1987-1988 by the Support Center for Educational Equity for Young Mothers, a part of AED in New York City. According to the Center, the proportion of single teenage mothers (either unmarried or divorced) has dramatically increased in the past two decades. These mothers are often the main wage-earners in their families. Teenage mothers with a high school education are less likely to live in poverty or need welfare for long periods, but about half of teenage mothers do not have a high school diploma when they deliver. Some teen-aged mothers dropped out before pregnancy, but most of them left school either during pregnancy after delivery, or later. Despite the demands made on these young women by pregnancy and parenthood, research on school-age mothers' educational patterns shows that they are more likely to finish high school, and delay subsequent pregnancies, if they are attending school during pregnancy and afterwards.[210]

The survey undertaken by the Center interviewed administrators in superintendents' offices, in drop-out prevention planning programs, and in programs for pregnant and parenting teens. The following points summarize the results of the interviews:

*Administrators' knowledge of this group of students is uneven.

*Support for young mothers is more limited than support for pregnant girls.

*Assistance for pregnant and parenting students is usually organized as innovations in service delivery rather than improvements in institutional policies. Most school districts have not undertaken the kinds of reforms that would encourage these students to remain in school or return to school. Instead, help for pregnant and parenting students is usually provided through special programs and services.

*Most Administrators focus on those pregnant girls and teenage mothers who are still in school. Stronger outreach mechanisms to find and re-enroll drop-outs who are parents or incipient parents are needed.

*Drop-out prevention initiatives often cite teenage pregnancy as a concern, but rarely allocate funds for this group.

*Coordination among public sector agencies working with teenage mothers is limited.

*Few administrators focus on policy changes or multi-service coordination.[211]

The Center does not presume that school districts are consciously ignoring the problems of pregnant and parenting teenagers. Nevertheless, the Center concludes that:

> These groups are victimized by a number of factors which combine to keep them low on everyone's short list of students to be targeted for assistance. First, pregnant and parenting teens are characterized by attributes, that, taken together, make it more likely that school personnel will slight their problems: they are disproportionately poor, minority, and behind grade level in school, and, by some, they are seen as 'bad' for having had sex and for having a child. Second, they are frequently out-of-sight, out-of-mind: they have either left school or they have enrolled in a special program which keeps them away from the mainstream schools and their staff. Third, the situation of young mothers has changed rapidly in the past decade: not only are more of them single (or will be single for some period while their children are young), but also, increasingly, they are expected to earn their own living. Yet, educational institutions, as well as other youth-serving institutions, have not changed their programming sufficiently to prepare young women adequately as breadwinners.[212]

The Center finds that these factors are further exacerbated by fiscal reductions and administrators who do not know how many teenage mothers are in their district, and what proportion does not have high school diplomas. Administrators are, therefore, not aware that pregnant and parenting teenagers are a substantial proportion of their drop-out population. "Yet, pregnant and parenting girls probably comprise half of the female drop-out population in most school districts (and, therefore, a quarter of the entire drop-out population)."[213] Equity requires meeting the needs of this group.

URBAN MIDDLE SCHOOLS ADOLESCENT PREGNANCY PREVENTION PROGRAM

The School and Community Services Division of AED, with assistance from the Ford Foundation and the Carnegie Corporation, established the Urban Middle Schools Adolescent Pregnancy Prevention Program (UMSAPPP). The following information was obtained by UMSAPPP:

According to the AED report, the work of UMSAPPP was based on three major premises:

*That schools are a crucial institution in any effective strategy for adolescent pregnancy prevention;

*That an effective adolescent pregnancy prevention proposal must focus on the middle school population; and

*That school-based programs are most successful when planned and conducted in coalition with local social service and community-based agencies.[214]

The focus on middle schools was based on the fact that teens are initiating sexual activity earlier than in the past (a significant proportion of adolescents become sexually active in 7th or 8th grade). In addition, according to AED there is evidence that tendencies which lead students to leave school begin in middle school. UMSAPPP has initiated a variety of activities in UMSAPPP cities. These include:

*The adoption of family life curricula involving a life options approach in a number of school districts.

*Mentor programs which pair young people with positive role models.

*The establishment of school-based clinics.

*The establishment of collaborative efforts to enhance the delivery of adolescent pregnancy prevention activities, found to be important because of the "traditional resistance of schools to any kind of involvement in outside agencies".

*Organizing after-school centers offering various activities: tutorial, cultural, sex education, etc.[215]

> According to the directors of the eight UMSAPP programs, the greatest overall impact of UMSAPP activities has been in the ownership of the problem: it was only with the impetus of UMSAPPP that educators in their cities assumed responsibility for doing something to help reduce rates of teen pregnancy in middle schools...[In addition], the required collaborations took some of the onus off the shoulders of educators, giving them, in the words of one director, 'allies in the community who could help in the fight and take some of the flack'...Furthermore, these collaborations, as UMSAPPP staff people overwhelmingly testified, while often time-consuming and difficult, ultimately saved time, energy and resources by eliminating redundancy of efforts: 'It eliminated that sense that you're wasting your time and that your efforts are futile. Working with other agencies gave you a sense of power, that you could really make a dent in the problem.'[216]

LIVING FOR THE YOUNG FAMILY THROUGH EDUCATION (LYFE)

LYFE is a nonprofit project that works with the New York City Board of Education and the Agency for Child Development to help meet the tremendous need for child care for teen parents. LYFE provides child care for teen parents in 13 public high schools. Each school has two rooms devoted to a child care center. One room is for eight infants aged two months through six months. The second is for those six months through two and a half years of age.

The child care centers are open during school hours. The parents bring their children to the centers at the beginning of the day and stay there during the first class period to study parenting skills, caring for the infants to acquire practical experience. During this first period, the staff of the center also help the teens work through any problems that might stand in the way of their academic work that day. Then the mothers and fathers go to their other classes.[217]

The child care center serves non-parents, too. The Life Parenting Class is open to everyone. In addition, the center is used for vocational education experience by students who are interested in becoming child care providers.

LYFE also provides other supports to the teen parents. Each teen family has a social worker who provides individual and group counseling, acts as a day-to-day advocate, and refers the parents as necessary to lawyers, vocational programs, GED programs, public assistance workers and housing authorities. One of LYFE's goals is to help each teen parent become independent and self-sufficient. After the social worker makes referrals, teen parents have a family assistant who accompanies them and supports them in advocating for themselves to get the services they need.[218]

Staff members of the Commission visited one of LYFE's centers and noted that the center

provides high-school students with quality care for their children. It requires mothers to fill out forms detailing their children's food intake, sleeping patterns, and health, fostering mothering skills in addition to providing day care. The program also encourages fathers to participate in their children's upbringing. Facilitated through the school social worker, the program creates a support system for the teenage mother and her child that appears to be extremely effective. The mothers appeared relaxed and happy when they came to pick up their children at the end of the school day. The program appears to eliminate much of the stress attached to balancing high-school together with child-rearing at a young age.

RECOMMENDATIONS

The Commission on Sex Discrimination in the Statutes supports the passage of Senate 456, sponsored by Senator Donald DiFrancesco, which establishes a Young Parents' Grant Program to provide funds to local boards of education for day care services for teenage parents while they are attending the public schools of the district.

A COPY OF THIS BILL CAN BE FOUND AT APPENDIX H.

The Commission feels that this bill provides an important first step in addressing this issue. It would also affirm this State's commitment to the support of families, and acknowledge that a woman need not stop her own development when she chooses to bear the responsibility of becoming a mother.

The Commission further recommends that the Department of Education take steps to broaden the availability of programs for New Jersey's teen parents by studying both private and public in-state programs and out-of-state public programs that have been successful in addressing the growing problem of pregnancy related drop-outs.

ENDNOTES

1. N.J. Const. art. 8, § 4, ¶ 1.

2. N.J.Stat. Ann. 10:5-3 (West 1976 & 1991 Supp.).

3. Klein, *Sex Equity in Classroom Organization and Climate*, in Handbook for Achieving Sex Equity Through Education (hereinafter Handbook) 189 (1985).

4. Commission on Sex Discrimination in the Statutes, Public Hearing before the Commission on Sex Discrimination in the Statutes on Sex Discrimination in Education, July 13, 1989 [hereinafter Hearing] (1990), testimony of William Waldman at 38X.

5. Hudson Institute, Workforce 2000 85(1987).

6. Women's Equity Action League, Report on the Economic Status of Women 2 (1987). WEAL primarily uses reports published by government data services.

7. Hearing, *supra* n. 4, testimony of Hazel Frank Gluck at 36x.

8. 20 U.S.C.S. § 1681 (1982).

9. Handbook, *supra* n. 3 at 18 - 23.

10. *Id.*

11. *Id.* at 5.

12. *Id.* at 3.

13. Relative to white women, women of color have lower average incomes. It would seem that race may be at least as determinative of the economic status of black women and girls as is gender. Achieving racial and cultural equity as well as sex equity must therefore be the ultimate goal.

14. Handbook, *supra* n. 3 at 3.

15. Sassen, *Success Anxiety in Women: A Constructivist Interpretation of its Source and its Significance*, 50 HARV. EDUC. REV. 13 (1980).

16. However, the problem of "success anxiety" illustrates that we have all been socialized with an inherently "male" viewpoint. The traditional way to view such anxiety is to assume that the anxiety is associated with fears and consequences of going beyond the bounds traditionally allowed women. Admitting that society has linked women to a stereotype of incompetence and non-achievement, it further postulates that women have internalized this negative stereotype. It is this internalization that acts as a barrier to success. Therefore, this view would require that training of women stress their abilities in non-traditional areas, giving them the necessary confidence to succeed. There *is* another view, which sees the problem to be the standard definition of success. In this view it is not the women who have the problem. Rather, women think in terms of relationships and context, and as a result, they see the price one pays for success more clearly than do men. Success as society has traditionally defined it often comes at the expense of personal relationships and emotional needs. Since this cost exists for both males and females, (though females through socialization are more aware of it), it is the social structure within institutions exacting these costs which must change, not women. With the integration of "female" modes of viewing the world into school institutions, women will have less anxiety and the definition of success for everyone will perhaps shift to reflect individual needs and potential. We recognize that the incorporation of such a viewpoint into the schools and education system would be an extremely difficult process for educators and administrators trained to look at the world without considering such a perspective. Nevertheless, it is useful to keep such possibilities in mind when defining sex equity or in designing courses of study or integration within the curriculum, for teachers and students alike. *Id.* at 21, 22. *See also* Founce, WOMEN AND AMBITION: A BIBLIOGRAPHY (1980).

17. Sassen, *supra* n. 15.

18. Biklen & Shakeshaft, *The New Scholarship on Women* in HANDBOOK, *supra* n. 3 at 45, *quoting* Pleck & Pleck, THE AMERICAN MAN 1 (1980).

19. Washington Office of the State Superintendent of Public Instruction, *Mathematics and Science Equity: Do You Have It? How To Get It* (1986), *quoting* Swoope & Johnson, *Students' Perceptions of Interest in Using Computers: Boys, Girls or Both?* (Paper presented at the Annual Meeting of the American Educational Research Association (Chicago, Ill., March 31 - April 4, 1985)). In one study of pupils in grades 1 - 12, computers were seen as having considerable interest to both sexes. However, both sexes saw boys' interest as significantly higher than girls'. In addition, many boys became interested in computers as a result of computer games, while in this same study interest in using such videogames was influenced strongly by the format of the game. When it had a "masculine" theme such as Star Trek, boys were seen to be more interested than girls. When the format used Ms. Pacman, the opposite was true. According to the authors of the study, this "marked difference in interest patterns" depending on the content of the game "has implications for encouraging and supporting girls' continued interest. This finding suggests that thematic content of computer software might similarly influence children's

interest in using the computer, and that possible sex bias should be an important consideration in software selection." As for mathematics, "evidence from most studies suggests that parents, teachers and counselors have a powerful influence on students' academic choices. There is also fairly strong evidence suggesting that students themselves, through their attitudes, self-perceptions, and feelings about mathematics are a major source of the sex differences in both mathematics achievement and course enrollment patterns. Of these factors, confidence in one's ability and the perceived value of math appear to play the most critical roles."

20. *See, e.g.,* Mississippi U. for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L.Ed. 2d 1090 (1982); Petrie v. Illinois H. S. Ass'n, 75 Ill. App. 3d 980, 31 Ill. Dec. 653, 394 N.E. 2d 855 (1979).

21. Craig v. Boren, 429 U.S. 190, 197, 97 S. Ct. 451, 457, 50 L. Ed. 2d 397, 407 (1976).

22. 20 U.S.C.S. § 1681 (1982).

23. 34 C.F.R. Part 106 (1990).

24. *See* Cannon v. University of Chicago , 648 F. 2d 1104 (7th Cir. 1981).

25. 20 U.S.C.S. § 1681 (a)(1982).

26. Under 20 U.S.C.S. § 1681(c), the definition of "educational institution" is the narrow one of pre-school, school, college, etc., either public or private. The term is not defined to include any other organization that provides education or training.

27. 20 U.S.C.S. § 1681 (a) (1982) (as amended by Act Dec. 31, 1974, Pub. L. No. 93-568, § 3 and made retroactive to July 1, 1972).

28. Such rules, etc., "shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken." 20 U.S.C.S. § 1682 (1982).

29. Responsibility for approving such rules, regulations, and general orders was delegated by the President to the Attorney General by Ex. Or. No. 12250 of November 2, 1980, § 1-102, 45 Fed. Reg. 72995 (codified in 42 U.S.C.S. §2000d-1 note (1989)).

30. 20 U.S.C.S. § 1682 (1982).

31. If financial support is to be terminated or refused, there must be an express finding on the record, after opportunity for a hearing, of a failure to comply with a rule, regulation, or order. Termination or refusal to fund shall not be effective until 30 days after the head of the federal department or agency files a full written report with the House and Senate committees having legislative jurisdiction over the program. Termination or refusal to fund is to be limited

to the particular political entity or part, and limited in its effect to the particular program or part, found in noncompliance, 20 U.S.C.S. §1682 (1982). Termination or refusal to fund is subject to judicial review, as are most other compliance actions 20 U.S.C.S. § 1683 (1982).

32. Act August 21, 1974, Pub. L. No. 93-380, Title VIII, Part D § 844, 88 Stat. 612 (codified in 20 U.S.C.S. § 1681 note). The proposed regulations were published on June 20, 1974, two months before the law was signed. However, the provision originated on May 20, 1974, as a modified floor amendment offered by Senator Tower during debate on the Education Amendments of 1974. The final form of the provision was adopted by the Conference Committee meeting on that legislation. (In 1974, most federal education programs were administered by the Department of Health, Education and Welfare.).

33. H.R. Res. 190, 98th Cong. 1st Sess. (1983).

34. 34 CFR PART 106 (1990). 45 Fed. Reg.30955 (1980), as amended at 47 Fed. Reg 32527 (1982).

35. On December 11, 1979, the Department of Health, Education, and Welfare published a final policy interpretation to clarify the meaning of "equal opportunity" with respect to intercollegiate athletics, 44 Fed. Reg. 71413-71423 (1979). The policy interpretation is divided into three sections: compliance with Title IX in financial assistance based on athletic ability, compliance in other program areas (such as equipment and supplies, games and practice times, etc.), and compliance in meeting the interests and abilities of male and female students. *See* 34 C.F.R. §106.41(c) (1990).

36. 441 U.S. 677, 99 S. Ct. 1946, 60 L.Ed. 2d 560 (1979).

37. 441 U.S. at 694.

38. 45 C.F.R.§106.9 (a) (1990).

39. 45 C.F.R.§106.8 (1990).

40. 45 C.F.R.§106.3 (a) (1990).

41. 45 C.F.R.§106.3 (b) (1990).

42. 456 U.S. 512, 102 S. Ct. 1912, 72 L.Ed. 2d 299 (1982).

43. 456 U.S. at 524, 25, 102 S. Ct. at 1919-1920.

44. 456 U.S. at 530, 102 S. Ct. at 1922, 23.

45. *See, e.g.,* Hillsdale College v. HEW, 696 F.2d 418, 427-30 (6th Cir. 1982)(students receiving BEOGs and GSLs brought only the college's financial aid department under Title IX coverage); Rice v. Presidents & Fellows of Harvard College, 663 F. 2d 336, 338-39 (1st Cir. 1981,), cert. denied, 456 U.S. 928 (1982) (grading practices not covered by Title IX because direct federal aid only to work study program); University of Richmond v. Bell, 543 F. Supp. 321, 322-23, 333 (E.D. Va 1982) (athletic department not covered by Title IX when federal aid disbursed only to library); Bennett v. West Tex. State Univ., 525 F. Supp. 77, 80-81 (N.D. Tex. 1981) (athletic department not covered by Title IX because federal aid only to students in the form of financial aid); Othen v. Ann Arbor School Bd., 507 F. Supp. 1376, 1389 (E.D. Mich. 1981)(athletic department not covered by Title IX because federal aid not earmarked to a particular department); Stewart v. New York Univ., 430 F. Supp. 1305, 1314 (S.D.N.Y. 1976)(law school admissions not covered by Title IX because federal aid disbursed only for housing).

46. 20 New Eng. L. Rev. 805, 806 (1985).

47. 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed. 2d 516 (1984).

48. 465 U.S. at 574, 5, 104 S.Ct. 1222.

49. 465 U.S. at 582, 104 S. Ct. at 1226 (Brennan, *dissenting*).

50. Act Mar 22, 1988, Pub. L. No. 100-259, 102 Stat. 28.

51. *Id.* at §2.

52. N.J.Stat. Ann. 10:5-3 (West 1976 & 1991 Supp.).

53. N.J.Stat. Ann. 10:5-4 (West 1976).

54. N.J.Stat. Ann. 10:5-5(l) (West 1976 & 1991 Supp.). *See also* Hinfey v. Matawan Regional Board of Education, 77 N.J. 514, 391 A. 2d 899 (1978). The court ruled that public schools and public education are covered by anti-discrimination laws and that public school curriculum is one of the "advantages, facilities...(or) privileges" of public school, as a place of public accommodation as intended in the Law Against Discrimination.

55. Balsley v. North Hunterdon Regional High School Board of Education, N.J. Super. 221, 542 A. 2d 29, 225 (App.Div. 1988), certification granted 114 N.J. 287, 554 A.2d 844.

56. 163 N.J. Super. 225, 394 A. 2d 855 (App.Div. 1978).

57. *Id.*

58. N.J. CONST., art. 8, § 4, ¶ 1.

59. Pingry Corp. v. Hillside, 46 N.J. 457, 217 A. 2d 868 (1966).

60. Board of Educ. of Plainfield v. Cooperman, 209 N.J. Super. 174, 307 A. 2d 253 (App.Div. 1986).

61. Robinson v. Cahill, 351 A.2d 713, 69 N.J. 133 (1975).

62. Robinson v. Cahill, 339 A.2d 193, 67 N.J. 333, *cert. denied* 96 S. Ct. 217, 423 U.S. 913, 46 L.Ed. 2d 141 (1975).

63. N.J.STAT. ANN. 18A:6-9 (West 1989). *See also*, N.J. Atty. Gen. F.O. 1975, No. 28.

64. N.J.STAT. ANN. 18A:6-6 (West 1989).

65. N.J.STAT. ANN. 18A:29-2 (West 1989).

66. N.J.STAT. ANN. 18A:36-20 (West 1989).

67. Elmwood Park Educ. Ass'n v. Board of Educ. of Elmwood Park, 3 N.J.ADMIN. REP. 249 (1980).

68. *H*infey v. Matawan Regional Bd. of Educ., 147 N.J. Super. 201, 371 A.2d 78 (App.Div. 1977), rev'd on other grounds, 77 N.J. 514, 391 A.2d 899.

69. N.J.ADMIN. CODE tit. 6, § 4-1 (1975). [hereinafter in text, Title 6:4] The text of the regulations is reproduced at Appendix B.

70. N.J.ADMIN. CODE tit. 6, § 4-1.1 (1975).

71. N.J.ADMIN. CODE tit. 6, § 4-1.3 (1975).

72. N.J.ADMIN. CODE tit. 6, § 4-1.5 (1975).

73. N.J.ADMIN. CODE tit. 6, § 4-1.3 (1975).

74. N.J.ADMIN. CODE tit. 6, § 4-1.2(a), 1.3(a)(b) (1975).

75. N.J.ADMIN. CODE tit. 6, § 4-1.3 (f) (1975).

76. N.J.ADMIN. CODE tit. 6, § 4-1.4 (1975).

77. N.J.ADMIN.CODE tit. 6, § 4-1.5 (1975).

78. N.J.ADMIN. CODE tit. 6, § 4-1.6 (a) (1975).

79. N.J.ADMIN. CODE tit. 6, § 4-1.7 (1975).

80. N.J.ADMIN. CODE tit. 6, § 4-1.7 (d), (e) (1975).

81. N.J.ADMIN. CODE tit. 6, § 4-1.8 (a), (b) (1975).

82. N.J.ADMIN. CODE tit. 6, § 4-1.8 (c) (1975).

83. HEARING, *supra* n. 4, testimony of Rebecca Lubetkin at 8x.

84. *Id.*

85. HEARING, *supra* n. 4, Testimony of Betty Hickey at 32x.

86. New Jersey Dep't of Educ ., VITAL EDUC. STATISTICS (1987-88, 1988-89).

87. HEARING, *supra* n. 4, Testimony of Betty Hickey at 33x.

88. ALASKA STAT. § 14.18.010 *et seq.* (Cum. Supp. 1990).

89. ALASKA STAT. § 14.18.010 (Cum. Supp. 1990).

90. ALASKA STAT. § 14.18.020 (Cum. Supp. 1990).

91. ALASKA STAT. § 14.18.030 (Cum. Supp. 1990).

92. ALASKA STAT. § 14.18.070 (Cum. Supp. 1990).

93. ALASKA STAT. § 14.18.090 (Cum. Supp. 1990).

94. Alaska Women's Commission, *Commitment or Complacency? An Assessment of Sex Equity in Alaska's Educational Institutions* (1986).

95. *Id.*

96. *Id.* at 9.

97. *Id.*

98. *Id.* at 24.

99. WASH. REV. CODE ANN. § 28A.640.010 (Supp. 1991).

100. WASH. REV. CODE ANN. § 28A.640.020 (Supp. 1991).

101. *Id.*

102. *Id.*

103. WASH. REV. CODE ANN. § 28A.640.050 (Supp. 1991).

104. *Id.*

105. ME. REV. STAT. ANN. tit. 5, § 4551 (1989).

106. 94-348 Maine Human Rights Commission chapter 4, §4.03B.

107. *Id.*

108. See Sexual Harassment, text *infra.* at nn. 152-173.

109. ME. REV. STAT. ANN. tit. 5, § 4576 (Supp. 1990).

110. Discussion with Patricia Ryan, Executive Director, Maine Human Rights Commission.

111. ME. REV. STAT. ANN. tit. 5, §§ 4604, 4611, 4612 (1989).

112. ALASKA STAT. § 14.18.100 (Cum. Supp. 1990).

113. WASH. REV. CODE ANN. § 28A.640.040 (Supp. 1991).

114. ME. REV. STAT. ANN. tit. 5, §§ 4551 *et seq.* (1989).

115. Blumrosen, *Six Conditions for Meaningful Self-Regulation*, 69 A.B.A.J. 1264, 1269 (1983).

116. Blumrosen, *Toward Effective Administration of New Regulatory Statutes*, 29 AD. L. REV. 87, 98, (1977).

117. 441 U.S. 677, 99 S. Ct. 1946, 60 L.Ed. 2d 560 (1979).

118. The United States Department of Health, Education and Welfare is now split into two departments, the Department of Health and Human services and the Department of Education.

119. 441 U.S. at 708.

120. *Id.*

121. N.J.STAT.ANN. 10:5-1 *et seq.*(1976 & 1991 Supp.).

122. N.J.STAT.ANN. 10:5-13 (1976).

123. *Id.*

124. 58 N.J. 483 (1971).

125. *Id.* at 494 (*citations omitted*).

126. N.J.STAT.ANN. 18A:36-20 (1989).

127. N.J. Atty. Gen. F.O. 1975, No. 28.

128. *Id.*.

129. 77 N.J. 514, 391 A2d 899 (1978).

130. 391 A. 2d at 902.

131. *Id.* at 903. This switch is significant for the present discussion. Alfred Blumrosen's 1965 report discussed fully *infra.*, was truly the guiding force behind the change. He found that the housing laws were not being adequately enforced by the Department of Education, and recommended that the functions of the Division Against Discrimination be moved to the Attorney General's Office. It is the Commission's contention that the laws dealing with discrimination in education, particularly in the area of curriculum, are also not being adequately enforced by the Department of Education.

132. *Id.* at 903-904.

133. *Id.* at 907-908.

134. 391 A.2d at 910. Conford, *dissenting.*

135. 100 N.J. 269 (1985).

136. *Id.* at 298.

137. *Id.* at 299-310.

138. 225 N.J. Super. 221, 542 A.2d 29 (App. Div.1988).

139. 117 N.J.434, 568 A2d 895, 902 (1990).

140. HEARING, *supra* n. 4, testimony of Judith Savage at 49.

141. The primary enforcement agency in New Jersey for laws concerning racial discrimination.

142. The New Jersey Commission on Civil Rights, REPORT TO THE HONORABLE RICHARD J. HUGHES, GOVERNOR AND TO THE LEGISLATURE OF NEW JERSEY ON MATTERS RELATING TO THE WORK OF THE DIVISION ON CIVIL RIGHTS 12, 13 (1964).

143. *Id.* at 19.

144. Blumrosen, *supra* n. 113 at 94 .

145. *See* Note, *The Department of Public Advocate - Public Interest Representation and Administrative Oversight*, 30 RUTGERS L. REV. 386 (1977).

146. N.J. STAT. ANN. 52:27E-41 (1986).

147. N.J. STAT. ANN.. 52:27E-31 (1986). "The Public Advocate shall have sole discretion to represent or refrain from representing the public interest in any proceeding."

148. This is thought to be an appropriate action since the Commission is also recommending that the statute include a private cause of action for individuals wishing to litigate.

149. Note, *supra* n.145, at 427-429.

150. Flanders v. William Paterson College of New Jersey, 163 N.J. Super. 225, 394 A. 2d 855 (App.Div. 1978).

151. HEARING, *supra* n. 4, testimony of Betty Hickey, NJEA President, at 32X

152. HEARING, *supra* n. 4, testimony of Rebecca Lubetkin at 12X.

153. 1990 Session, Sen. Bill 2115, an act prohibiting sexual harassment and amending P.L. 1945, c. 169.

154. Association of American Colleges, *In Case of Sexual Harassment: A Guide for Women Students,* PROJECT ON THE STATUS AND EDUCATION OF WOMEN (1986).

155. Griffin, Thomas M., *Sexual Harassment and Title IX*, 18 Educ. L. Rep. 513, 514 (1984), *citing* Massachusetts Department of Education, WHO'S HURT AND WHO'S LIABLE (1983).

156. *See e.g.,* Association of American Colleges, *supra.* at n. 155.

157. Griffin, *supra* n. 155 at 513.

158. *Id.*

159. *Id.*

160. Brown v. City of Guthrie, (W.D. Okla., 1980) 30 E.P.D. 33031;22 F.E.P. 1621.

161. Kaufman, Susan and Wylie, Mary Lou, *One-Session Workshop on Sexual Harassment.* NAWDAC (1983). Also, discussion with Princeton University coordinator of sexual harassment at Princeton.

162. Smith, Margaret D., Ed.D., *Must Higher Education Be A Hands-On Experience? Sexual Harassment by Professors,* 28 EDUC. L. REP. 693, 694 (1986).

163. *Id.*

164. Claypoole, Theodore F., *Inadequacies in Civil Rights Law: The Need For Sexual Harassment Legislation*, 48 OHIO STATE L. J. 1153 (1987).

165. *Id.*

166. Amyx, *Sex Discrimination: The Textbook Case*, 62 CAL. L. REV. 1312, 1332 (1974).

167. Smith, supra n. 162 at 693.

168. 45 Fed. Reg. 74677 (1980).

169. 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed. 2d 49 (1986).

170. 477 U.S. at 65.

171. 693 F2d 897, 902 (1982).

172. *Id.*

173. Meritor, *supra* n. 169, 477 U.S. at 72.

174. HEARING, *supra* n. 4, testimony of Nadine Shanler at 32.

175. *Id.*

176. Sadker and Sadker in HANDBOOK, *supra* n. 3 at 145.

177. *Id.* at 146.

178. *Id.* at 150-152.

179. *Id.* at 151.

180. *Id.* at 153.

181. *Id.* at 145.

182. HEARING, *supra* n. 4, testimony of Nadine Shanler.

183. The Gender/Ethnic Expectation and Student Achievement Program (GESA) was created by the Oregon Department of Education. It is based on the premise that in order to ensure quality and excellence on an equitable basis, teachers need to directly confront the issue of gender and ethnic bias in their interactions with students. Once teachers have examined their own bias, as demonstrated by their own behavior toward female, male, and minority students, necessary curricular and other changes can be accepted more easily.

184. Conversation with Hilda Thompson, Equity Specialist, Department of Education, Portland, Oregon, March 30, 1990. The core of these workshops is that the teachers participate in groups of two. When the workshops are over, the pairs then observe each other's behavior and dynamics, using codings provided in the workshop. This is where the real work of such teachers begins. While teachers are being observed by their workshop partner, the Office of the Equity Specialist pays for a substitute teacher for that partner. The costs are minimal according to the Equity Specialist.

The program is emphasized and has been successful. For example, in Portland, the biggest Oregon district, enough teachers have sufficient training to now train teachers at their own schools, so that the Equity Specialist herself is not the only trainer. Nevertheless, the process is frustratingly slow. As it is structured in Oregon, it relies on the initial willingness of teachers to be open to education on this issue. This leaves out all those teachers who are arguably most in need of such training. The Equity Specialist recommends incorporating such issues and material into the teacher education process itself, thus ensuring that graduating teachers will not need to be coaxed into the process. The program is commonly referred to as the Gender/ Ethnic Expectation and Student Achievement (GESA).

185. Sadker and Sadker, *Sexism in Texts*, 50 HARV. EDUC. REV. 36 (1980). The Sadkers run the Non-Sexist Teacher Education Project at the American University in Washington, D.C.

186. *Id.* at 39.

187. *Id.*

188. *Id.*

189. *Id.* at 38.

190. *Id.*

191. *Id.*

192. HANDBOOK, *supra* n. 3, at 155.

193. *Id.* at 154.

194. Sadker and Sadker, *Sexism in Texts*, 50 HARV. EDUC. REV. 36, 37 (1980).

195. Child, Potter and Levine, *Children's Textbooks and Personality Development: An Exploration in the Social Psychology of Education*, 60 PSYCH. MONOGRAPHS 279 (1946).

196. For a more recent look at the subject of sex role stereotyping in textbooks, see Amyx, *Sex Discrimination: The Textbook Case*, 62 CALIFORNIA LAW REVIEW 1312 (1974), and Saario, Jacklin, and Tittle, *Sex Role Stereotyping in the Public Schools*, 43 HARV. EDUC. REV. 386 (1973).

197. Amyx, *supra* n. 227 at 1316, 1317.

198. Saario, Jacklin, and Tittle, *supra* n. 227 at 390.

199. *Id.* at 394.

200. *Id.* at 397.

201. *Id.* at 396.

202. Amyx, *supra* n. 227 at 1335.

203. See Lester, *My Daughter the Quarterback, My Son, the Bellydancer*, CIV. LIB. L. REV. 76 (1975), *cited in* Hodgson, *Sex, Texts, and the First Amendment*, 5 J. L. & EDUC. 173 (1976), at 186-188.

204. Hodgson, *supra* n. 203 at 178.

205. Lau v. Nichols, 414 U.S. 563, 94 S. Ct. 786, 38 L.Ed. 2d 1 (1974).

206. *Id.*

207. Emerson, THE SYSTEM OF FREEDOM OF EXPRESSION 715-16 (1970).

208. Headquartered in Washington, D.C. and New York, N.Y.

209. AED Academy News, V. 11, n.2, Fall, 1988.

210. Academy for Educational Development, *Improving Educational Opportunities for Pregnant and Parenting Students: A report on a Survey of Policies, Practices, Programs, and Plans for Pregnant and Parenting Students in Nine Urban School Districts by the Support Center for Educational Equity for Young Mothers School and Community Services Academy for Educational Development* 3 (1988).

211. *Id.* at 2.

212. *Id.* at 12.

213. *Id.*

214. Academy for Educational Development, *Urban Middle Schools Adolescent Pregnancy Prevention Program Middle School Partnerships for Adolescent Pregnancy Prevention: The AED Experience* (1988).

215. *Id.* at 3.

216. *Id.* at 4. The eight UMSAPPP cities are Atlanta, Boston, Detroit, Kansas City, Los Angeles, Milwaukee, Norfolk, and Oakland.

217. Children's Defense Fund, *Child Care: An Essential Service for Teen Parents*, 12 (1987).

218. *Id.*

APPENDIX A

TITLE IX-PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

Sec. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, paraprofessional education, and graduate higher education, and to public institutions of undergraduate higher education:

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an instituion which admits only students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization of the application if this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine; and

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number of percentage of persons of that sex in any community, State, section , or other area: *Provided,* That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private pre-school, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

FEDERAL ADMINISTRATIVE ENFORCEMENT

Sec. 902. Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance of guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

JUDICIAL REVIEW

Sec. 903. Any department or agency action taken pursuant to section 1002 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on the grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof or any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

Sec. 904. No person in the United States shall, on the ground of blindness or severly impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

EFFECT ON OTHER LAWS

Sec. 905. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

AMENDMENTS TO OTHER LAWS

Sec. 906. (a) Sections 401(b), 407(a), 410, and 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000(b), 2000c-6(a) (2), 2000c-9, and 2000h-2) are each amended by inserting the word "sex" after the word "religion".

(b) (1) Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended by inserting after the words "the provisions of section 6" the following: "(except section 6(d) in the case of paragraph (1) of this subsection)"

(2) Paragraph (1) of subsection 3(r) of such Act (29 U.S.C. 203(r) (1)) is amended by deleting "an elementary or secondary school" and inserting in lieu thereof "a preschool, elementary or secondary school".

(3) Section 3(s) (4) of such Act (29 U.S.C.203(s) (4)) is amended by deleting " an elementary or secondary school" and inserting in lieu thereof "a preschool, elementary or secondary school".

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

Sec. 907. Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

APPENDIX B

EQUALITY IN EDUCATIONAL PROGRAMS

Chapter Table of Contents

SUBCHAPTER 1. GENERAL PROVISIONS

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SUBCHAPTER 1. GENERAL PROVISIONS

Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 18A:36-20 and were filed and became effective May 20, 1975, as R.1975 d.137. See: 7 N.J.R. 136(a), 7 N.J.R. 252(a).

6:4-1.1 Purposes and objectives

The New Jersey Constitution and implementing legislation guarantee each child in the public schools equal educational opportunity regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. To assure these basic rights the Commissioner of Education and the State Board of Education have developed these regulations which specifically implement N.J.S.A 18A:36-20 and the State Board of Education resolution concerning sex equality in educational programs. These regulations have also been developed in conformity with relevant Federal and State statutes concerning discriminatory conduct.

6:4-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Discriminatory practices" means an action or failure to act based upon race, color, creed, religion, sex, ancestry, national origin or social or economic status.

"Educational activities and programs" means all activities and programs conducted or sponsored by the school either during the school day or after regular school hours.

"School" means every public elementary or secondary school, every regional school, every county vocational school, or any other public institution providing special or general educational services to students from grades kindergarten through 12.

6:4-1.3 Policy Development

(a) Each local school district shall develop a policy of equal educational opportunity to be adopted as a resolution by the board of education. The school district shall inform the community it serves of this resolution by publicizing it in an adequate manner, including but not limited to the district's customary methods of information dissemination.

(b) Each local school district shall develop two affirmative action programs or plans, which shall include timetables for corrective action to overcome the effects of any previous patterns of discrimination which may exist and a systematic internal monitoring procedure to ensure continuing compliance.

1. One such program or plan shall include, but need not be limited to, action as required by Section 5 (School and classroom practices) of this Subchapter.

2. Another program or plan shall include, but need not be limited to, action as required by Section 6 (Employment/contract practices) of this Subchapter.

3. The programs or plans shall be made available for review to all interested parties.

(c) Each local school district shall designate a member of its professional staff as the affirmative action officer to coordinate and implement the district's efforts to comply. The progress of the district in complying shall be reported by the superintendent to the board of education as it shall require.

(d) As part of its affirmative action programs or plans, each local school district shall arrange for or provide in-service training for school personnel on a continuing basis to identify and resolve problems arising from prejudice on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(e) Each board of education shall adopt and approve courses of study, instructional materials, and programs designed to eliminate discrimination and promote understanding and mutual respect between children of different races, colors, creeds, religions, sexes, ancestries, national origins or social or economic status. Community involvement in this process shall be encouraged.

(f) The local school district shall evaluate courses of study and instructional materials already in use to determine whether they are designed to achieve the objectives set forth in subsection (c) of this Section and shall supplement them as necessary where they are not so designed. As the use of such courses and materials is discontinued in the normal course of events, the local school district shall replace them with courses and instructional materials designed to meet the objectives set forth in subsection (e) of this section.

6:4-1:4 Technical assistance

The commissioner or designee shall provide technical assistance to local school district for the development of policy guidelines, procedures and in-service training for school personnel so as to aid in the elimination of prejudice on the basis of race, color, creed, religion, sex, ancestry or social or economic status.

6:4-1.5 School and classroom practices

(a) No student shall be denied access to or benefit from any educational program or activity solely on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(b) There shall be no differential requirements for completion of course offerings or courses of study solely on the basis or race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(c) There shall be no discrimination against students because of pregnancy, childbirth, pregnancy-related disabilities, actual or potential parenthood, or family or marital status. A student shall not be excluded from any educational program or activity because of pregnancy or related conditions unless she so requests or a physician certifies that such exclusion is necessary for her physical, mental or emotional well-being. If she is excluded for these reasons, she must be provided with adequate and timely opportunity for instruction to continue or make up her schoolwork without prejudice or penalty.

(d) Public school students shall not be segregated on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

1. A local school district shall provide for separate restroom, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(e) No course, including but not limited to physical education, health, industrial arts, business, vocational or technical courses, home economics, music and adult education shall be offered separately on the basis of race, color, creed, religion, sex ancestry, national origin or social or economic status.

1. Portions of classes which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls, provided that the course content for such separately conducted sessions is the same.

(f) The athletic program, including but not limited to intramural, extramural, and interscholastic sports, shall be available on an equal basis to all students regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. The athletic program as a whole shall be planned to ensure that there are sufficient activities so that the program does not deny the participation of large numbers of students of either sex.

1. The activities comprising such athletic program shall receive equitable treatment, including but not limited to staff salaries, purchase and maintenance of equipment, quality and availability of facilities, scheduling of practice and game time, length of season and all other related areas or matters.

2. A school may choose to operate separate teams for the two sexes in one or more sports and/or single teams open competitively to members of both sexes, so long as the athletic program as a whole provides equal opportunities for students of both sexes to participate in sports at comparable levels of difficulty and competency.

(g) School personnel shall not use tests, procedures or other guidance and counseling materials which are differentiated or stereotyped on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(h) When informing students about possible career, professional and/or vocational opportunities, school personnel shall in no way restrict or limit the options presented to students on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

As amended, R.1977 d.274, eff. August 3, 1977
See: 9 N.J.R. 307(b), 9 N.J.R. 416(a).

6:4-1.6 Employment/contract practices

(a) All persons regardless of race, color, creed, religion, sex, or national origin shall have equal access to all categories of employment in the public educational system of New Jersey.

(b) All New Jersey public school districts shall comply with all State and Federal laws related to equal employment, including but not limited to the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 *et seq.*), Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Executive Order 11246 as amended, Equal Pay Act of 1963 as amended, and Title IX of the Education Amendments of 1972 (Higher Education Act).

(c) No school district shall enter into any contract with a person, agency, or organization if it has knowledge that such person, agency or organization discriminates on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status, either in employment practices or in the provision of benefits or services to students or employees.

6:4-1.7 Compliance

(a) Each school district shall submit to the Commissioner of Education or designee a copy of its resolution of equal educational opportunity (*see* N.J.A.C. 6:4-1.3(a)) and the name of its affirmative action officer (*see* N.J.A.C. 6:4-1.3(c)) within 60 days of the effective date of these regulations.

(b) Each school district shall, within 120 days of the effective date of these regulations, submit its proposed program or plan of affirmative action for school and classroom practices (*see* N.J.A.C. 6:4-1.3(b)).

(c) Each school district shall, within 180 days of the effective date of these regulations, submit its proposed program or plan of affirmative action for employment and contract practices (*see* N.J.A.C. 6:4-1.3(b)).

(d) The commissioner or designee shall review the programs or plans, approve or reject said plans and shall notify the school system of his desicion within 60 days of receipt of the plans.

(e) If the plan is in any way unacceptable, the commissioner shall designate a person or persons to work with the school district to develop an acceptable plan, which must be completed and approved within 60 days of the receipt of the notice that the original plan was unacceptable.

(f) The plan must be initiated within a time period not to exceed 120 days from the time of

its approval and must be fully implemented in accord with an approved timetable.

(g) If within one year of the effective date of the affirmative action plan a school district is still found not to be in compliance with these regulations or its plan was not implemented, the commissioner may initiate, with the approval of the State Board of Education, action to suspend, terminate or refuse to award continued Federal or State financial assistance. The commissioner may also make referral to any appropriate judicial and/or administrative Federal, State or local agencies.

6:4-1.8 State review and evaluation

(a) At least once every three years the commissioner or designee shall review and evaluate the progress of each school district in implementing its affirmative action plan. If sufficient appropriations exist, the commissioner may utilize the services of qualified independent consultants to effectuate the review and evaluation. The commissioner shall provide each local school district with a copy of such analysis.

(b) The board of education of each local school district shall make available to the community a summary of the review and evaluation in accordance with the procedures adopted pursuant to N.J.A.C. 6:4-1.2(a).

(c) Any and all inadequacies in the program plan as revealed in the review and evaluation shall be corrected as soon as is practicable, but in no case shall correction of the plan be delayed more than 60 days from receipt of notice of inadequacy or noncompliance. If such inadequacy is not corrected in the specified time, it shall result in the procedure described in N.J.A.C. 6:4-1.7(g).

6:4-1.9 Appeals

In accordance with N.J.S.A. 18A:6-9, any individual may petition the Commissioner of Education to resolve a dispute arising under these regulations pursuant to procedures set forth in N.J.A.C 6:24-1.1 et seq.

6:4-1.10 Effect of related statutes

The obligation to comply with these regulations is not obviated or alleviated by any State or local law or rule or regulation of any organization, club, athletic or other league or association which

would limit the eligibility or participation of any student on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

APPENDIX C

SENATE, No. ____
ASSEMBLY, No.____

STATE OF NEW JERSEY

By_____

AN ACT to provide relief under the Law Against Discrimination for claims of discrimination by a public school in curriculum, employment or public accommodations, and amending P.L. 1967, c.271.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. P.L. 1967, c.271, (C.18A:6-9) is amended to read as follows:

The Commissioner shall have jurisdiction to hear and determine without cost to the parties, [all] controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the Commissioner. Discrimination by a public school in curriculum, employment, or public accommodations shall be governed by the Law Against Discrimination.

Statement

The Commissioner of Education is empowered to hear and decide all controversies arising under the school laws with few exceptions. This bill would provide alternative remedies under the Law Against Discrimination for claims of discrimination by a public school in curriculum, employment or public accommodation. Under the bill, an individual would be able to bring a claim under the Law Against Discrimination in the Division on Civil Rights, or in Superior Court. The bill is recommended by the Commission on Sex Discrimination in the Statutes, which found during its study of the educational system that individuals who charge such discrimination did not have adequate choices of remedies available to them.

SENATE, No. ____
ASSEMBLY, No.____

STATE OF NEW JERSEY

By_____

AN ACT concerning actions to enforce civil rights and amending P.L. 1979, c. 404.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. P.L. 1979, c. 404 (C. 10:5-27.1) is amended to read as follows:

In any action or proceeding brought under this act, the judge or the administrative trier of fact may award to the prevailing party [may be awarded] a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to the respondent unless there is a determination that the charge was brought in bad faith.

STATEMENT

Successful plaintiffs are currently forced to file dual actions when they bring an action under the Law Against Discrimination that is ultimately adjudicated by the Commissioner of Education: the Commissioner of Education has been found to have the obligation to decide any issue of educational discrimination, but cannot award attorney's fees, which are available if the action is brought under the same law but adjudicated by a court or by the Division on Civil Rights. This bill would enable an administrative trier of fact to adjudicate all issues, including attorneys fees. The bill is recommended by the Commission on Sex Discrimination in the Statutes.

APPENDIX D

SENATE, No. ____
ASSEMBLY, No.____

STATE OF NEW JERSEY

By_____

AN ACT concerning sex discrimination in education and amending P.L. 1967, c 271.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. P.L. 1967 c.271 (C.18A:6-6) is amended to read as follows:

No discrimination based on sex shall be made in the formulation of the scale of wages, compensation, appointment, assignment, promotion, transfer, resignation, dismissal, or other matter pertaining to the employment of teachers in any school, state college, college, university, or other educational institution, in this state, supported in whole or in part by public funds unless it is open to members of one sex only, in which case teachers of that sex may be employed exclusively. The Commissioner of Education shall establish standards that encourage equal employment opportunities in public schools, and shall require any district or institution not in compliance with those standards to take affirmative steps to correct any deficiencies. The Department of Education shall conduct a review of the compliance of each district in the state with the standards promulgated pursuant to this Act and shall report its findings to the Legislature within three years of the effective date of this Act.

2. There is appropriated from the General Fund to the Department of Education the sum of $500,000 to effectuate the purposes of this Act.

3. This Act shall take effect immediately.

STATEMENT

Discrimination based on sex is specifically prohibited by the current law; however, affirmative action programs or plans are necessary to overcome the effects of any previous patterns of discrimination that may exist. Affirmative action programs or plans also provide systematic internal monitoring procedures to ensure continuing compliance. This bill would mandate the implementation of affirmative action programs or plans for all districts found to be lacking in this area by the Commissioner of Education during the monitoring procedure. It also provides for a review of compliance by the Department of Education of each district with a report to be presented to the Legislature. The bill is recommended by the Commission on Sex Discrimination in the Statutes, which found during its study of the educational system that there was a great disparity between the numbers of male and female administrators in school districts across the state.

APPENDIX E

FEDERAL REGISTER VOLUME 45, NUMBER 219, EEOC
RULES AND REGULATIONS

Sec. 1604.11 Sexual Harassment

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who are qualified for but denied that employment opportunity or benefit. [Sec. 1604.11 reads as last amended by 45FR 74676 , effective November 10, 1980]

APPENDIX F

SENATE, No. 2115

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator LIPMAN

AN ACT prohibiting sexual harassment and amending P.L.1945, c.169.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as follows:

5. As used in this act, unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of this act.

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of this act, and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies.

f. "Employee" does not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit in to active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by this act.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

i. "Attorney General" means the Attorney General of the State of New Jersey or his representative or designee.

j. "Commission" means the Commission on Civil Rights created by this act.

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodiation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment or transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the permises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station, any dispensary, clinic or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or postsecondary school from using in good faith criteria other than race, creed, color, national origin or ancestry, in the admission of students.

m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169), P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as his residence or the household of his family at the time of such rental; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by him as his residence or the household of his family at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, in the sale, lease or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

o. "Real estate broker" includes a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to

sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or whom is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.

r. "Blind person" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist deaf persons or which fitted with a special harness so as to be suitable as an aid to the mobility of a blind person, and is used by a blind person who has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of the blind, handicapped or deaf as reputable and competent to provide dogs with training, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence or sleeping place of one or more persons, but shall not include any single family

residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally or customarily permitted or invited.

w. "Deaf person" means any person whose hearing is so severely impaired that he is unable to hear and understand normal conversational speech through the unaided ear alone, and who must depend primarily on supportive device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

, dd. "Service dog" means any dog individually trained to a handicapped person's requirements including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

, ee. "Qualified Medicaid applicant" means an individual who is qualified or eligible to receive skilled nursing or intermediate

care facility services which are reimbursable by the Medicaid program pursuant to P.L.1968, c.413 (C.40:4D-1 et seq.).

ff. "Discrimination because of sex" includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(1) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing;

(2) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisins affecting the individual's employment, public accommodations or public services, education, or housing;

(3) The conduct or communication has the purpose or effect of unreasonably interfering with an individual's employment, public accommodations or public services, education, or housing or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

2. This act shall take effect immediately.

STATEMENT

New Jersey's "Law Against Discrimination" prohibits discrimination on the basis of sex. This bill would provide that "discrimination on the basis of sex" includes sexual harassment. Under the bill, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical acts of a sexual nature when submission or rejection of such acts affects employment, public accommodations, public services, education or housing.

CIVIL JUSTICE

Amends the "Law Against Discrimination" to include sexual harassment.

APPENDIX G

Bibliography of Sex Equity Materials for Teacher Education

The following is a listing of a variety of sex equity materials that may be used in preservice teacher education. They are developed by the Non-Sexist Teacher Education Project (NSTEP) at the American University, Washington, D.C., and funded by the Women's Educational Equity Act (WEEA). They provide a useful model by which to measure choices made by teacher-education programs regarding textbooks and curricula.

*Bornstein, Rita, "Sexism in American Education." This module examines the nature and impact of sex bias in schools. It presents a brief history of sexism in American education, provides information on the emergence of the increased awareness for sex equity from the civil rights movement to the requirements of Title IX, and focuses on the challenges to education in a time of changing values and norms.

*Kerber, Linda, "The Impact of Women on American Education." This unit identifies the central themes in the history of women's access to education and the contributions women have made to American educational institutions. Using information found in diaries, local school records, and the newsletters of teachers's organizations as well as in other primary and secondary sources, the module spans over two hundred years of American educational history.

*Gall, Joyce, and Gall, Meredith, "Boys and Girls in School: A Psychological Perspective." This module takes a close look at what the best available research says about sex differences and similarities in six major areas: (1) school achievement in math and science, (2) school achievement in reading and writing, (3) school achievement in social studies and humanities, (4) school grades, (5) exceptional learners (handicapped and gifted), and (6) personality characteristics.

*Sadker, Myra and Sadker, David, "Between Teacher and Student: Overcoming Sex Bias in the Classroom." This module examines the research on sex bias in teacher expectations and interaction patterns. It offers several classroom scenarios and gives readers the opportunity to analyze these vignettes for potential bias in the way teachers treat male and female students. A variety of observation systems are provided so that teacher candidates can assess the nature and degree of sex bias in the real world of the classroom.

*Gollnick, Donna, Sadker, Myra and Sadker, David, "Beyond the Dick and Jane Syndrome: Confronting Sex Bias in Instructional Materials." This module describes six forms of bias that often characterize instructional materials: invisibility, stereotyping, imbalance, unreality, fragmentation, and linguistic bias. A variety of exercises allows teacher candidates to analyze passage from elementary and secondary school tests for sex bias.

*Schmuck, Patricia and Schmuck, Richard, "Promoting Sex Equity in School Organizations." This unit uses three paradigms - biological, psychological, and socialogical - to explain sex differences in schools. It explores in some detail a fourth paradigm - one drawn from a social psychological perspective. The authors drew a portrait of the school as a miniature society, a setting that has a unique culture and social structure that may either encourage or inhibit sex equity.

APPENDIX H

SENATE, No. 456

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator DiFRANCESCO

AN ACT establishing a Young Parents' Grant Program and making an appropriation therefor.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. There is established a Young Parents' Grant Program in the Department of Human Services to provide funds to local boards of education for the provision of day care services for teenage parents who are enrolled in the public schools of the district.

2. Child care services shall be made available free of charge to teenage parents during the time that the young parent is attending the educational program of the district; except that the young parent shall convey to the board of education any funds received for day care pursuant to any other State or federal law.

3. Local board of education employees may use the child care services of the center for a fee to be established by the Commissioner of Human Services provided that there are adequate facilities and space available.

4. A child care center operated by or under contract with a local board of education shall operate under approval and licensure by the Department of Human Services pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.).

5. A local board of education which has or which plans to initiate an educational program for teenage parents may apply to the Department of Human Services for a grant to enable the board to establish and operate a day care center or to contract for day care services.

The application shall include:

a. The nature and duration of the educational program;

b. An estimate of the number of children who will require child care;

c. Evidence that suitable facilities will be available for the child care center;

d. The personnel who will be in charge of the child care center shall meet applicable local board of education employment requirements; and

e. Any other information required by the Commissioner of Human Services.

6. Upon approval of the application of a local board of education for a grant under the Young Parents' Grant Program by the Commissioner of Human Services, the local board

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of education shall be eligible for a grant of up to 100% of the cost of operating the program or contracting for the services less any fees received pursuant to section 3 of this act. In determining the amount of the grant, the commissioner may reduce the amount received pursuant to this act by an amount equal to funds for day care provided to a young parent pursuant to any other State or federal law.

7. The Commissioner of Human Services shall adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations necessary to effectuate the purposes of this act.

8. Funds received by a local board of education pursuant to this act shall not be subject to the expenditure limitations imposed pursuant to sections 3 and 25 of P.L.1975, c.212 (C.18A:7A-3 and 18A:7A-25).

9. There is appropriated from the General Fund to the Department of Human Services $1,000,000.00 for the purposes of this act.

10. This act shall take effect immediately.

STATEMENT

This bill establishes a Young Parents' Grant Program to provide funds to local boards of education for day care services for teenage parents while they are attending the public schools of the district.

The day care centers would be licensed by the Department of Human Services pursuant to the provisions of the "Child Care Center Licensing Act," P.L.1983, c.492 (C.30:5B-1 et seq.). A local board of education would be eligible to receive 100% of the cost of the day care program. This bill provides that although day care services will be provided at no cost to the young parent, the young parent shall convey to the board of education any funds received for day care pursuant to any other State or federal law. The bill also provides that personnel would be required to meet applicable local board of education employment requirements.

This bill appropriates $1,000,000 from the General Fund to the Department of Human Services.

HUMAN SERVICES

Establishes a Young Parents' Grant Program and appropriates $1,000,000.

APPENDIX I

LIST OF WITNESSES TESTIFYING BEFORE
THE COMMISSION ON SEX DISCRIMINATION IN THE STATUTES
PUBLIC HEARING ON JULY 13, 1989

HEARING SCHEDULE JULY 13, 1989

JAMES J. FARRELLY
NORTH HUNTERDON REGIONAL HS DISTRICT

NADINE SHANLER
PROFESSOR
EDUCATIONAL ADMINISTRATION AND SECONDARY ECDUCATION
TRENTON STATE COLLEGE

REBECCA LUBETKIN
THE STATE UNIVERSITY OF NEW JERSEY RUTGERS
CONSORTIUM FOR EDUCATIONAL EQUITY

GUIDA WEST
INSTITUTE FOR RESEARCH ON WOMEN
RUTGERS, THE STATE UNIVERSITY

JUDITH SAVAGE
NEW JERSEY DEPARTMENT OF EDUCATION

MEREDITH FLYNN
DIRECTOR OF GUIDANCE
GLOUCESTER COUNTY VOCATIONAL SCHOOL

ELIZABETH HICKEY, ASSOCIATE DIRECTOR
NEW JERSEY EDUCATION ASSOCIATION

JILL ZANHISER
WOMEN'S CENTER OF NORTHWEST NEW JERSEY
CENTENARY COLLEGE

SUZY CHICHESTER
AIDE TO ASSEMBLYMAN JOHN ROONEY

JOYCE VUOCOLO
LIBRARY SCIENCE SPECIALIST

KATHY NICHOLLS
DIRECTOR OF OPERATIONS
GREENTREE LEARNING CENTER